PROXIMATE CAUSE

THE DOCTRINE OF

PROXIMATE CAUSE

AND

LAST CLEAR CHANCE

BY

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Printed and Bound by
L. H. Jenkins, Edition Book Manufacturer
Richmond, Va.

PREFACE

In view of the large and increasing number of actions for damages, and the consequent necessity for the frequent application of the doctrine of proximate cause, this volume has been compiled and written.

The object is to bring together the learning of many courts of last resort upon this important topic to be a lamp to the feet of all whose pleasure and duty it is to make investigation of truth and search for causes, and not to cite many cases, but rather to cite a few leading ones from each of many courts. Those most helpful in defining and applying the subject have been sought, and as far as possible the latest important enunciations of the courts have been selected.

By giving to each court a separate section it is hoped to avoid the common salmagundi which is more likely to confuse than enlighten the student.

The law of this subject has been reduced to a science. It deals in certainties, ex-

cluding uncertainties and vague generalities; it looks to the proximate, not to the remote; to the certain, not to the doubtful; to the clear, not to the misty; to the efficient, nearest known cause relating to the effect under consideration. It looks upon the investigation of truth as a search for causes, and upon all philosophy as in quest of the proximate cause.

The proximate cause is the only cause which can be reasoned from conclusively. The real trouble now to be encountered abides in the facts of each particular case. The whole truth will be found pointing unerringly to the proximate cause, between which and the effect the connection will be plain and intelligible.

MELVILLE PECK,
April, 1914. Richmond, Va.

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DOCTRINE OF
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SECTION 1.

ENGLAND.

¶ 1. In the evening of the 28th day of October, 1770, at Milborne Port * * * it being the day the fair was held there, defendant threw a lighted serpent, being a large squib, consisting of gunpowder and other combustible materials, from the street into the market-house, which was a covered bulding, supported by arches, open at one end and enclosed at the other end and on both sides, when a large concourse of people were then assembled. The lighted serpent or squib fell upon the standing of one Yates, a vendor of gingerbread; one Willis instantly, to prevent injury to himself, threw the squib across the market-house, when it fell upon another standing there, of one Ryall, on which he was exposing wares for sale; Ryall instantly and to

save himself and his goods threw the squib to another part of the building, and in so throwing struck plaintiff in the face, therewith putting out one of his eyes. The jury found for plaintiff, subject to the opinion of the court. The court said: "The act of throwing the squib into the market-house was of a mischievous nature, and bespeaks a bad intention, and whether the plaintiff's eye was put out *mediately* or *immediately* thereby, the defendant, who first threw the squib, is answerable in this action; but suppose the defendant had no bad or mischievous intention when he threw the squib, yet as the injury done was not *inevitable,* this action well lies against him" * * *. (*Scott* v. *Shepherd,* 3 Wilson 403, 2 W. Blackstone's 892.)

¶ 2. Defendant having unlawfully placed a dangerous instrument in the public highway, was liable in respect of injuries occasioned by it to plaintiff, who was lawfully using the road, notwithstanding the fact that the immediate cause of the accident was the intervening act of a third person in removing the dangerous instrument from the carriageway, where defendant had

placed it, to the foot-path, where plaintiff was injured by it. (*Clark* v. *Chambers,* 3 Q. B. 327.)

¶ 3. Plate glass windows were insured against "loss or damage originating from any cause whatsoever except fire, breakage during removal, alteration, or repair of premises." A fire broke out on adjoining premises. Plaintiff, assisted by his neighbors, was removing his merchandise from the room—a mob attracted by the fire, tore down the shutters and broke the insured glass for the purpose of plunder. Held, that the proximate cause of damage to glass was the lawless act of the mob, and that it did not originate from the fire or breakage during removal." (*Marsdon* v. *Ins. Co.,* 1 C. P. 232.)

¶ 4. "One who stores water on his own land, and uses all reasonable care to keep it safely there, is not liable for damages effected by an escape of the water, if the escape be caused by the act of God, or *vis major;* e. g., by an extraordinary rainfall, which could not reasonably have been anticipated, although, if it had been antici-

pated, the effect might have been prevented."

¶ 5. "When the law creates a duty and the party is disabled from performing it without any default of his own, by the act of God, or the King's enemies, the law will excuse him; but when a party by his own contract creates a duty, he is bound to make it good notwithstanding any accident by inevitable necessity." (*Nicholas* v. *Marsland,* 2 Ex. Div. 1.)

¶ 6. "Where the proximate cause is the malicious act of a third person against which precautions would have been inoperative, the defendant is not liable in the absence of a finding either that he instigated it or that he ought to have foreseen and provided against it." (*Lathian* v. *Richards,* 1 Law Report 263 (1913.)

SECTION 2.

UNITED STATES SUPREME COURT.

¶ 7. "One obliged to form a judgment in an emergency on the spot is not to be held accountable in the same measure as one able to judge the situation in cold abstraction." (*Railroad Co.* v. *Brown,* 229 U. S. 317. Citing *The Germanic,* 196 U. S. 589.)

Assumption of Risk and Contributory Negligence Distinguished.

¶ 8. "There is a practical and clear distinction between assumption of risk and contributory negligence. By the former, the employee assumes the risk of ordinary dangers of occupation and those dangers that are plainly observable; the latter is the omission of the employed to use those precautions for his own safety which ordinary prudence requires." (*Craig* v. *Railroad,* 220 U. S. 590.)

¶ 9. "Although defendant may have been originally in fault, an entirely dependent and unrelated cause subsequently inter-

vening, and of itself sufficient to have caused the mischief, may properly be regarded as the proximate cause of plaintiff's injuries." (*Railroad* v. *Calhoun,* 213 U. S. 1, citing *Insurance Co.* v. *Tweed,* 7 Wall. 44.)

¶ 10. "Where the original vendor knowingly sells, as coal oil, a mixture of coal oil and gasoline, of such inflammable character as to be unlawful under the local statute, to a vendee who in ignorance of its unlawful nature sells it to a third party in like ignorance, the original vendor is directly responsible to the final purchaser for the consequences of an explosion, produced solely by reason of such unlawful nature while the oil is being used in a legitimate manner. In such a case the responsibility of the original vendor rests not on contract but in tort.

On the facts in this case, and in view of the ignorance of both vendees in regard thereto, the unlawful character of the articles sold *held* to be the proximate cause of plaintiff's injuries." * * * (*Waters-P. O. Co.* v. *Deselms,* 212 U. S. 159.)

Sec. 2. *United States Supreme Court.*

¶ 11. The insurance was against fire, and covered certain bales of cotton in the Alabama warehouse in Mobile. The policy contained a proviso that the insurers should not be liable to make good any loss or damage by fire which might happen or take place by means of * * * * * explosion * * * * *. During the life of the policy, an explosion occurred in a nearby warehouse, starting a fire which extended to the Alabama warehouse, destroying the insured cotton. Held, that the explosion was the proximate cause of the destruction of the insured cotton; that the intervening burning building did not constitute a new, intervening cause. (*The La. Mutual Ins. Co.* v. *Tweed,* 7 Wallace 44, 19 Law Ed. 65.)

¶ 12. "The question always is: Was there an unbroken connection between the wrongful act and the injury, a continuous operation? Did the facts constitute a continuous succession of events, so linked together as to make a natural whole, or was there some new and independent cause intervening between the wrong and the injury? * * * it must appear that the injury was the natural and probable consequence

of the negligent or wrongful act, and that it ought to have been foreseen in the light of the attending circumstances." (*Milwaukee Etc., R. Co.* v. *Kellogg,* 94 U. S. 469, 24 Law Ed. 256.)

¶ 13. "If the negligence of a railroad company contributes to, that is to say, has a share in producing any injury to its employee, it is liable, even though the negligence of a fellow-servant of the injured person is also contributory." (*G. T. R. Co.* v. *Cummings,* 106 U. S. 700, 27 Law Ed. 266.)

SECTION 3.

U. S. C. C. A.

¶ 14. "An injury which is not the natural consequence of an act or omission, and that would not have resulted but for the interposition of a new and independent cause, is not actionable." (*Chicago, Etc., R. Co.* v. *Richardson,* 121 C. C. A. 144.)

¶ 15. "In determining the cause of a loss for the purpose of fixing insurance liability, when concurring causes of the damages appear, the proximate cause to which the loss is to be attributed is the dominant, the efficient one that sets the other causes in operation; and causes which are incidental are not proximate, though they may be nearer in time and place to the loss." (*Hartford, Etc., Co.* v. *Pabst B. Co.,* 120 C. C. A. 45.)

¶ 16. Proximate cause and contributory negligence are ordinarily questions of fact for the jury to determine under all the circumstances. (*Great N. Ry.* v. *Thompson,* 118 C. C. A. 79; *Hale* v. *Mich. Cen. Ry.,* 118 C. C, A. 627,)

¶ 17. "Questions of negligence do not become questions of law for the court, except where the facts are such that all reasonable men draw the same conclusions from them. * * *" (*B. & O. R. Co.* v. *Taylor,* 109 C. C. A. 172.)

¶ 18. "One of the most valuable tests to apply to determine whether a negligent act was the proximate or remote cause of an injury is to determine whether a reasonable human agency has intervened, sufficient of itself to stand as the cause." (*The Santa Rita,* 100 C. C. A. 360, 30 L. R. A. (N. S.) 121.)

¶ 19. "A respondent, who, * * * * in good faith, took possession of a dredge being operated by libelant, cannot be held liable in damages on the ground that by reason of such action libelant's employees on the dredge left his service in violation of their contracts, and he was delayed in his work * * * although he at once retook possession of the dredge; such damages not being the direct and proximate result of respondent's claim but remote and speculative." (*Brown* v. *Pillow,* 98 C. C. A. 579.)

Sec. 3. *U. S. C. C. A.*

¶ 20. "The owner of a pipe line used for the transportation of petroleum, the escape of oil from which may cause damage to the property of others, is not bound to the exercise of such a high degree of care as will absolutely prevent leakage of such oil under any circumstances, * * * * *." * * * * "The blowing out of a rubber gasket between the two parts of a joint does not constitute evidence of negligence in the construction or operation of the pipe line" * * * * *.

¶ 21. "Plaintiff owned buildings near defendants' pipe line, one of which was occupied by a third person as a blacksmith shop. The blowing out of a gasket from a pipe joint in the evening caused a leakage of oil which spread over the ground around and under plaintiff's buildings. When the blacksmith came to his shop in the morning there was oil under it, the floor being two feet from the ground, and also in front where he was compelled to walk through it. He started a fire, heated a piece of iron, and cut off a piece on the anvil, and suffered such piece, which was red hot, to fall through a crack in the floor where it set

fire to the oil, and plaintiff's buildings were destroyed''—by that fire.

''HELD that, aside from any question of defendants' negligence, the act of the blacksmith, which was that of an independent intervening agent, for which defendants were not responsible, was negligent as a matter of law, and was the proximate cause of plaintiff's loss.'' (*Jennings et al.* v. *Davis,* 109 C. C. A. 451.)

¶ 22. ''The fact alone that an act of defendant was in violation of a penal statute does not afford ground for the recovery of damages by a third person, unless such act was also the proximate cause of the injury complained of.'' *Id.*

¶ 23. ''An act of negligence is not the 'proximate cause' of an injury, in a legal sense, where there was an independent intervening cause, unless the injury was not only the natural, but the probable result of such negligence, and the intervening cause should reasonably have been foreseen.'' (*The Santa Rita,* 173 Fed. R. 413.)

DEFINITION.

¶ 24. "A natural consequence of an act is the consequence which ordinarily follows it—the result which may be reasonably anticipated from it. A probable consequence is one that is more likely to follow its supposed cause than it is to fail to follow it." (*Cole* v. *Ger. S. & L. Soc.*, 124 Fed. 115, 59 C. C. A. 595, 63 L. R. A. 416.)

Other cases on proximate cause: *Kaiser* v. *Railroad*, 222 C. C. A. 235; *Boston & M. R. Co.* v. *Miller*, 122 C. C. A. 270; *Chicago, Etc., R. Co.* v. *Richardson*, 121 C. C. A. 144.

SECTION 4.

D. C.

¶ 25. "If the exposure of a passenger to the cold weather, caused by the negligence of a railroad company in failing to furnish her shelter after a collision, resulted in developing a tuberculous condition, or hastening the development of such condition already existing, the company is liable." (*Washington A. & Mt. V. Ry. Co.* v. *Lukens,* 32 App. D. C. 442.)

¶ 26. The proximate cause in actions for damages for personal injuries is ordinarily a question for the jury. (32 App. D. C. 442.)

¶ 27. "In an action against a master for the death of his servant, the negligence of a fellow servant contributing to the injury will not prevent a recovery if the negligence of the master had a share in producing it." (*Stevens* v. *Saunders,* 34 App. D. C. 321.)

ELEVATOR CASES.

¶ 28. The proximate cause of an injury is ordinarily a question of fact for the jury.

Sec. 4. *D. C.*

If there are no circumstances from which a jury can reasonably find that the negligence of the defendant was the proximate cause of the injury, the question is one for the court. If the facts are such as to cause reasonable minds to differ, the question is one for the jury. (*Munsey* v. *Webb,* 37 App. D. C. 185.)

¶ 29. See cases on subject of liability for injury to elevator passengers in note to *Mitchell* v. *Marker,* 25 L. R. A. 33, 51 Ohio St.; *Edward* v. *M. B. Co.,* 2 L. R. A. (N. S.) 744, 61 Atl.—R. I.

¶ 30. "It is doubtful if there is any known method of conveyance in which a higher degree of care is required in its construction and operation than that of an elevator." (*Munsey* v. *Webb,* 37 App. D. C. 185, 187.) See *Griffen* v. *Manice,* 166 N. Y. 188, 59 N. E. 925, 82 Amer. State 630, 52 L. R. A. 922.

¶ 31. Where, in an action against a street railway company by an administrator whose decedent was injured by the premature starting of a car of the defendant which the decedent was attempting to

board, it appeared that before and at the time of the accident, the deceased had heart disease so far developed that it would gradually have brought on a fatal hemorrhage at some indefinite future time, but that the final result of the decease was brought about or hastened by the accident, the proximate cause of the death, in contemplation of law, is the injury so received, and not the disease." (*Guenther* v. *Railroad,* 23 App. D. C. 493.)

SECTION 5.

ALABAMA.

¶ 32. "It is settled in Alabama, and we think it is the weight of authority, that a violation of a statute or an ordinance is negligence *per se*, and a person proximately injured thereby may recover for such injuries against the violator of the law."

"Where the plaintiff violates an ordinance, it may be contributory negligence if it proximately contributed to the injury, provided the ordinance was enacted for the defendant's benefit, and not merely for the public generally—or for a class." (*Watts* v. *Montgomery Trac. Co.*, 175 Ala. 102, 105, 57 So. 471.)

¶ 33. "Where plaintiff's negligence though slight, is the proximate cause of the injury, he cannot recover for the simple antecedent negligence of defendant." (*Birmingham R. L. & P. Co.* v. *Fox*, 174 Ala. 657, 56 So. 1013.) See *L. & N. R. Co.* v. *Williams*, 172 Ala., 560, 55 So. 218.

¶ 34. *Action on attachment bond.*—Damage must be the natural and proximate con-

sequence of the wrong, not the remote or accidental result. (*Pollock* v. *Gantt.,* 69 Ala. 373.)

¶ 35. "A wrongdoer is responsible only for the proximate consequence of his acts." (*Central of Ga. R. Co.* v. *Sigma Lumber Co.,* 170 Ala., 627, 628, 54 So. 205.)

¶ 36. Proximate cause a question for the jury. (*Weatherby* v. *N. C. & St. Louis R. Co.,* 166 Ala., 575, 577, 51 So. 959.)

¶ 37. Contributory negligence, proximate cause—children under seven years not chargeable with; over seven and under fourteen are presumed prima facie to be incapable thereof; those over age of fourteen are presumed to be capable of contributory negligence. (*Birmingham & Atl. R. Co.* v. *Mattison,* 166 Ala. 602, 52 So. 49.)

¶ 38. "Wherever it appears that the negligence of a servant was the proximate cause of his own injury, the negligence of the master ceases to be the efficient proximate cause of the injury." (*Ala. Steel Wire Co.* v. *Tallant,* 165 Ala. 521, 51 So. 835.)

Sec. 5. *Alabama.*

¶ 39. "To be actionable the negligence relied on must be the efficient proximate cause of the injury." (*So. Ry. Co.* v. *Crawford,* 164 Ala. 178, 51 So. 340.)

¶ 40. "The doctrine of subsequent negligence or last clear chance is recognized in Alabama." (*Stanford* v. *St. L. & S. F. R. Co.,* 163 Ala. 210, 50 So. 110.) See *L. & N. R. Co.* v. *Young,* 153 Ala. 232, 45 So. 238.

¶ 41. "Contributory negligence of the person injured is no defense where the proximate cause of the injury to one known to have been in peril is due to a wilful or wanton wrong." (*Anniston Elec. & Gas Co.* v. *Rossen,* 159 Ala. 195, 196, 48 So. 798, 133 Amer. State, 32.)

¶ 42. "The legal relation of cause and effect must be established between the negligence alleged and the injury suffered to sustain an action." (*Malcolm* v. *L. & N. R. Co.,* 155 Ala. 337, 46 So. 768; *Virginia-Carolina Chem. Co.* v. *Mayson,* 7 Ala. App. 588, 62 So. 253.)

¶ 43. "The action was for injuries to a person on account of the railroad's negli-

gence in setting fire to a dwelling. The * * * person escaped from the house without injury, but returned to the burning house and received the injury complained of. Held, that the causal connection between the negligence charged and the injury received was not broken by leaving the house in the first instance." (*Birmingham Ry. L. & P. Co.* v. *Hinton*, 146 Ala. 273, 40 So. 988.) See *M. & O. R. Co.* v. *C. M. Brewing Co.*, 146 Ala. 404, 41 So. 17.

¶ **44.** "Where plaintiff was struck and injured, while walking along a path by the side of a railroad track, by a cow which was thrown from the track by the engine, and which fell against plaintiff after striking the ground, the injury is the proximate consequence of the engine striking the cow; and the railroad company is liable on account of it, if there was negligence on the part of the engineer, although he was guilty of no negligence towards the plaintiff personally." (*Railroad* v. *Chapman*, 80 Ala. 615.)

SECTION 6.

ARIZONA.

¶ 45. "The term 'proximate cause' in the sense in which it is ordinarily used, means the efficient cause, which in a natural and continuous sequence, unbroken by any new and independent cause, produced the event, and without which that event would not have occurred."

"Solely" in an instruction to the jury was held to be good in place of "proximate cause." (*Gila Valley, G. & N. Ry. Co.* v. *Lyon,* 8 Arizona, 118, 71 Pacif. 957.) (Second hearing, 9 Arizona 218, 80 Pacif. 337.)

CONTRIBUTORY NEGLIGENCE.

¶ 46. "As to the general rule that a plaintiff cannot recover for the negligence of the defendant if his own want of care or negligence has in any degree contributed to the result complained of, there can be no dispute." (*Lopez* v. *Mining Co.,* 1 Arizona, 464, 480.)

¶ 47. "Ordinary care is the degree of

precaution which ordinarily prudent persons would exercise under like circumstances. The failure to exercise such care is negligence. Negligence is therefore never absolute or intrinsic, but is always relative to the existing circumstances.'' (*Stanfield* v. *Anderson,* 5 Arizona 1.) See *Crandall* v. *Consol. Tel. Co.,* 14 Arizona, 322.

SECTION 7.

ARKANSAS.

¶ 48. "In order to warrant a finding that negligence is the proximate cause of an injury, it must appear that the injury was the natural and proximate consequence of the negligence and that it ought to have been foreseen in the light of the attending circumstances, but it is not necessary that the particular injury which did happen should have been actually foreseen." (*Pulaski G. L. Co.* v. *McClintock*, 97 Ark. 576, 583, 134 S. W. 1189.) See *St. Louis & So. Ry. Co.* v. *Fultz*, 91 Ark. 260, 120 S. W. 984.

¶ 49. "Where two concurring causes produce an injury which would not have resulted in the absence of either, the party responsible for either cause is liable for the consequent injury, and this rule applies where one of the causes is the act of God." (*St. Louis So. Ry. Co.* v. *Mackey*, 95 Ark. 297, 301, 129 S. W. 78.)

¶ 50. "Before one can be held liable for an alleged negligent act, it must be the

proximate cause of the injury, and also be of such a nature that the consequent injury should be one which, in the light of attending circumstances a person of ordinary foresight and prudence would have anticipated." (*Ark. Valley Trust Co.* v. *McIlroy,* 97 Ark. 160, 165, 133 S. W. 816, 31 L. R. A. (N. S.) 1020.)

¶ 51. Concurrent cause of injury: Here a horse scared at a pair of goats in road and backed into pond and was drowned. (*Strange* v. *Bodcaw Lumber Co.,* 79 Ark. 490, 96 S. W. 152.)

¶ 52. False certificate of acknowledgment by a notary is not proximate cause of loss. (*Smith* v. *Maginnis,* 75 Ark. 472, 89 S. W. 91.)

¶ 53. "Where a boy pushed from the platform of a rapidly moving train by a brakeman, caught at the iron handrail, and fell under the wheels, so that his foot was crushed, the push was the proximate cause of the injury." (*St. L. & S. F. R. Co.* v. *Kilpatrick,* 67 Ark. 47, 54 S. W. 971)

¶ 54. "Where a street car company severed the hose through which firemen were

Sec. 7. *Arkansas.*

throwing a stream upon a burning building, whereupon furniture contained therein, which otherwise could have been saved, was consumed for want of water to extinguish the fire, the act of cutting off the hose is to be regarded as the proximate cause of the injury." (*Little Rock T. & E. Co.* v. *McCaskill*, 75 Ark. 133, 86 S. W. 997, 70 L. R. A. 680.)

SECTION 8.

CALIFORNIA.

¶ 55. "An employee cannot recover on account of defective machinery or appliances or unsafe place in which to work, unless the same has directly caused or contributed to the injury, in other words, was the proximate cause of the injury." (*Worley* v. *Spreckles Bros., C. Co.,* 163 Cal. 60, 124 Pac. 697.)

¶ 56. "Negligence is not presumed, and the plaintiff must allege and prove that the negligent act of the defendant was the direct or proximate cause of the injury, or he cannot recover." (*Marsiglia* v. *Dozier,* 161 Cal. 403, 119 Pac. 505.) See *Schwartz* v. *Cal. G. & E. Corp.,* 163 Cal. 398, 125 Pac. 1044.

¶ 57. "In determining the question of liability for a negligent act, the 'last clear chance' doctrine is only applicable to a defendant who was actually aware of the fact that the plaintiff had negligently put himself in a position of danger; it does not apply to the case of a defendant who would

Sec. 8. *California.*

have discovered the plaintiff's peril but for remissness on his part." (*Thompson* v. *Railroad*, 165 Cal. 748, 134 Pacif. 709.)

¶ **58.** "The party who last had a clear opportunity of avoiding the accident, notwithstanding the negligence of his opponent, is considered solely responsible for the injury." (*Esrey* v. *Railroad*, 103 Cal. 541, 37 Pac. 500.) See post Sec. 60.

SECTION 9.

COLORADO.

¶ 59. "The defendant induced the plaintiff's servant in charge of plaintiff's premises to leave them, and go to defendant's assistance. During the servant's absence a fire was kindled upon or near the plaintiff's premises, and was carried by a wind over his field, destroying his crop. Held, that neither the kindling of the fire nor the rising of the wind was occasioned by the servant's absence, and neither was the natural and legitimate sequence of such absence." (*Clark* v. *Wallace*, 51 Col. 437, 439, 118 Pac. 973, 27 Ann. Cas. 349.)

¶ 60. "A loaded car escaped from control and ran down a declivity in defendant's coal mine, injuring plaintiff, an employee. The failure to prevent its escape was due to the defective condition of the stop-block, but its escape from the control of the driver, in the first instance, was attributable to the mutinous conduct of the mule drawing the car * * * * * if the appliance had been in good order the injury would not have occurred, it was held that

the misconduct of the mule was not to be regarded as an efficient intervening cause, and that the defendant's negligence in the matter of the stop-block was the proximate cause of the injury." (*National Fuel Co.* v. *Green*, 50 Col. 307, 115 Pac. 709.)

¶ **61.** "Proximate Cause" is that cause which in natural and continued sequence, unbroken by any efficient intervening cause, produced the result complained of, and without which that result would not have occurred." (*Town of Lyons* v. *Watt*, 43 Col. 238, 95 Pac. 949, 18 L. R. A. (N. S.) 1135.)

¶ **62.** "An alleged defect in the master's appliances, which, if it existed, in no way contributed to the injury complained of, is not actionable; and it is error to charge the jury that if the defect existed it was negligence." (*Kent Mfg. Co.* v. *Zimmerman*, 48 Col. 388, 110 Pac. 187.)

¶ **63.** "Where an engineer and fireman, by the exercise of proper care, could have discovered an animal at a crossing and slacked the speed of the train in ample time to have prevented killing it, their negligence was the proximate cause of the kill-

ing, and whether the owner is guilty of contributory negligence in turning the animal out on the highway in such close proximity to the crossing, is not involved. (*Rio Grande Co.* v. *Boyd,* 44 Col. 126, 96 Pac. 966.)

Leading case: *Blythe* v. *Railroad,* 15 Col. 333, 25 Pac. 702, 11 L. R. A. 615, 22 Amer. State, 403.

See *Carlock* v. *Denver &c., Co.,* 55 Col. 146.

SECTION 10.

CONNECTICUT.

¶ 64. "The statutory liability * * * * of a town for injuries received from defects in a highway exists only when the defect alone is the proximate cause of the injury. If the negligence of plaintiff or of a third person concurs with the highway defect in producing the injury, there is no cause of action." (*Place* v. *Sterling,* 86 Conn. 506, 86 Atl 3.)

¶ 65. "The so-called doctrine of last clear chance is not a newly discovered legal principal, limiting the operation of contributory negligence rule, but is merely a logical and inevitable corrollary of the long-accepted doctrine of actionable negligence and contributory negligence. To furnish a basis for applying the doctrine of contributory negligence, there must have been a concurrence of negligent conduct on the part of the injured person with that of the defendant. The negligence of the injured person must, furthermore, have been of such a character, and so related to the result, as to be properly considered an

efficient or proximate cause of it." (*Nehring* v. *Connecticut Co.*, 86 Conn. 109, 84 Atl. 301, 45 L. R. A. (N. S.) 896.)

¶ **66.** "Negligence is the proximate cause of an injury only when the sequence of events is unbroken by any new and intervening cause, and when without it the injury would not have occurred; that is, it must be an efficient act of causation separated from its effect by no other act of causation." (*Swayne* v. *Conn. Co.*, 86 Conn. 439, 85 Atl. 634.)

¶ **67.** "Violation of a rule of his employer will not preclude a servant from recovery, unless it was the proximate cause of his injury." (*Delinks* v. *N. Y. N. H. & H. R. Co.*, 85 Conn. 102, 81 Atl. 1036.)

¶ **68.** "The fact that plaintiff was injured while coasting in a highway in violation of a city ordinance, does not necessarily and as a matter of law preclude him from recovering damages from a defendant whose negligence is alleged to have caused the injury. To have that effect it must also appear that such violation, and not the supervening negligence of defendant was

the proximate cause of the injury." (*Farrington* v. *Cheoponis*, 84 Conn. 2, 78 Atl. 652.)

¶ 69. "It is immaterial whether the alleged negligence of the defendant has been established or not, provided the plaintiff's own negligence is a proximate cause of his injury." (*Elliott* v. *N. Y. Etc., R. Co.*, 84 Conn. 444, 80 Atl. 283.)

¶ 70. "The fact that the plaintiff in an action for negligence has himself violated the law is immaterial and irrelevant, unless a causal connection is shown between his illegal act or omission and the subsequent injury for which he seeks to recover." (*Case* v. *Clark*, 83 Conn. 183, 76 Atl. 518.)

Defined.

¶ 71. "The 'proximate cause' of an event, juridically considered, is only that which in a natural sequence, unbroken by any new and intervening cause, produces it, and without which the event would not have occurred; for the law does not search for the more remote agencies by which an injury is brought about or made possible,

but holds the last conscious agent in producing it responsible therefor." (*Miner* v. *McNamara,* 81 Conn. 690, 72 Atl. 138, 21 L. R. A. (N. S.) 477.)

¶ **72.** "Negligence is only deemed contributory when it is a proximate cause of the injury." (*Smith* v. *Conn. Ry. & Ltg. Co.,* 80 Conn. 268, 67 Atl. 888, 17 L. R. A. (N. S.) 707.)

¶ **73.** Failure of master to inspect cable proximate cause of servant's injury. (*Rincicotti* v. *O'Brien Contracting Co.,* 77 Conn. 617, 60 Atl. 115, 69 L. R. A. 936.)

SECTION 11.

DELAWARE.

¶ 74. "To entitle the plaintiff to a recovery, he must satisfy the jury by a preponderance, or greater weight of evidence, that the injuries complained of resulted from the negligence of the defendant, without any fault, on his part, which proximately entered into and contributed to his injuries." (*Eaton* v. *Wilmington City Ry. Co.*, 1 Boyce (Del.) 435, 75 Atl. 369.)

A Proper Instruction.

¶ 75. "The defendant can be held liable only for such negligence as constituted the proximate cause of the injuries complained of. * * * * * In order for the plaintiff in either of the cases before you to recover at all, it must be proved to your satisfaction that the defendant's negligence was the proximate cause of the injuries complained of. The plaintiff cannot recover in either case for the effects of tuberculosis or any other disease contracted after the accident, unless it is satisfactorily

shown to the jury that such disease was the natural and probable consequence of the defendant's negligence, nor can there be any recovery for the effects of any disease contracted before the accident unless the jury are clearly satisfied from the evidence that such disease was aggravated or increased by the negligence of the defendant, and even then recovery could be had only to the extent that such effects were so aggravated or increased." (*Baldwin* v. *Peoples Ry. Co.,* 7 Penne (Del.) 383, 72 Atl. 979.)

¶ **76.** "Whose negligence was the proximate cause of the injury complained of?" is a question which must be determined from the evidence, under all the facts and circumstances of the particular case." (*Wil. City Ry. Co.* v. *White,* 6 Penne. (Del.) 363, 66 Atl. 1009.)

¶ **77.** The negligence of plaintiff will not defeat his action unless it was the proximate cause of the injury complained of. (*Heinel* v. *Peoples Ry.* 6 Penne (Del.) 428 67 Atl. 173.)

¶ **78.** "If the negligence of the defendant was the proximate cause of the death

Sec. 11. *Delaware.*

or injury, it is immaterial that the negligence of some third person may have in some way contributed to the accident." (*Neal's Admr.* v. *W. & N. C. R. Ry.* 3 Penne. (Del.) 467, 53 Atl. 338.)

SECTION 12.

FLORIDA.

¶ 79. Evidence of proximate result. (*A. C. L. R. Co.* v. *Whitney,* 65 Fla. 72, 61 So. 179.)

¶ 80. "At the common law, in force in this state, except in the case of railroad employees, where a servant is guilty of negligence that contributes proximately to his injury, he cannot hold the master liable for such injury." (*Cornet Phos. Co.* v. *Jackson,* 65 Fla. 170, 61 So. 318.)

¶ 81. "A proximate cause is one that directly causes, or contributes directly to causing the result, without any independent efficient cause intervening between the cause and the result of injury. The particular injury sustained must be such as should have been contemplated as a natural and probable proximate result or consequence of the cause of negligence." (*F. E. C. Ry.* v. *Wade,* 53 Fla. 620, 43 So. 775.)

Leading cases: *T. & K. W. Ry.* v. *Pen. L. T. M. Co.,* 27 Fla. 1, 157, 9 So. 661, 17 L. R. A. 33; *W. U. Tel. Co.* v. *Milton,* 53 Fla. 485, 43 So. 495, 125 Amer. State, 1077.

SECTION 13.

GEORGIA.

¶ 82. "The question of proximate cause and of the exercise of ordinary care by the injured person are for the jury." (*Logan* v. *Hope,* 139 Ga. 589, 77 S. E. 809.)

¶ 83. Intervening cause. (*Georgia R. & B. Co.* v. *Rives,* 137 Ga. 376, 73 S. E. 645, 38 L. R. A. (N. S.) 564.)

¶ 84. Proximate cause of injury held to be negligence of co-employee and not of master. (*Frasher* v. *Smith & Kelly Co.,* 136 Ga. 18, 70 S. E. 792.)

¶ 85. "Where two acts of negligence concur in producing an injury, in the absence of either of which the injury would not have occurred, and both acts are chargeable to the same person, the doctrine of proximate cause is not applicable." (*County of Butts* v. *Hixon,* 135 Ga. 26, 68 S. E. 786.)

¶ 86. The crime of adultery for which a man was killed was not the proximate cause of death. (*Surpeme Lodge K. of P.* v. *Crenshaw,* 129 Ga. 195, 58 S. E. 628, 12 Ann. Cas. 307.)

¶ **87.** A well considered case. (*Savannah Elec. Co.* v. *Wheeler,* 128 Ga. 550, 58 S. E. 38, 10 L. R. A. (N. S.) 1176).

¶ **88.** Passenger ejected from train for drunkenness was left in helpless condition where he was killed by another train without negligence on part of second train's crew. Proximate cause held to be negligence in leaving him in such place in his condition. (*M. D. & S. R. Co.* v. *Moore,* 125 Ga. 810, 54 S. E. 700.)

¶ **89.** "Negligence to be the proximate cause of an injury must be such that a person of ordinary caution and prudence would have foreseen that some injury would likely result therefrom, not that the specific injury would occur." (*W. & A. R. Co.* v. *Bryant,* 123 Ga. 77, 83, 51 S. E. 20.) (*Mayor of Macon* v. *Dykes,* 103 Ga. 848, 31 S. E. 443.)

¶ **90.** An attempt to show that a cess pool generated malaria from which plaintiff's husband died, and that negligence of defendant company was proximate cause failed. (*Goodwin* v. *A. C. L. R. Co.* 120 Ga. 747, 48 S. E. 139.

Sec. 13. *Georgia.*

¶ 91. "To entitle a party to recover damages of a railroad company on account of the negligence of its agents, it should appear that the negligence was the natural and proximate cause of the injury; for, should it appear that the negligence of the company would not have damaged the party complaining, but for the interposition of a separate, independent agency, over which the railroad company neither had nor exercised control, then the party complaining cannot recover." (*Beckham* v. *S. A. L. Ry.*, 127 Ga. 550, 56 S. E. 638, 12 L. R. A. (N. S.) 476)

See *Coast Line R. Co.* v. *Daniels*, 8 Ga. App. 775, 70 S. E. 203.

SECTION 14

IDAHO.

¶ 92. The damages awarded must be the "natural and proximate result" of the injury complained of. (*Denbeigh* v. *O. W. R. & N. Co.,* 23 Idaho, 663, 132 Pac. 112.)

¶ 93. When it appears that the negligence of plaintiff was the proximate cause of his injury, he cannot recover. (*Rippetol* v. *Feely,* 20 Idaho, 619, 119 Pac. 465.) (*Goure* v. *Storey,* 17 Idaho 352, 105 Pacif. 794.)

¶ 94. "No one is liable for damages caused by the forces of nature, but he who wrongfully augments and accelerates those forces is liable for the damages caused by his wrongful acts." (*Mashburn* v. *St. Joe Imp. Co.,* 19 Idaho, 30, 113 Pacific, 92.) (*Lamb* v. *Lacey,* 16 Idaho, 664, 102 Pacific 378.) (*Axtell* v. *N. P. R. Co.,* 9 Idaho, 392, 74 Pacific, 1075.)

¶ 95. "Negligence on the part of a person which was not the proximate cause of his injury or death will not be a bar to his recovery." Proximate cause is matter for jury. (*Philmer* v. *Boise Trac. Co.,* 14 Idaho, 327, 94 Pac. 432, 15 L. R. A. (N. S.) 254, 125 Amer. State, 161.)

SECTION 15.

ILLINOIS.

¶ 96. "While the question of proximate cause is ordinarily one of fact to be determined by the jury, yet it may, under certain conditions of the evidence, become a question of law for the court." (*Devine* v. *Chicago, Etc., R. Co.,* 259, Ill. 449, 102 N. E. 803.)

¶ 97. Proximate cause matter of fact for jury. (*Tomasi* v. *Denk Bros. C. & C. Co.,* 257 Ill. 70, 100 N. E. 353.)

¶ 98. "If it can reasonably be concluded * * * that the accident would not probably have happened except for the failure of a railroad company to fence its tracks, it follows that the neglect to fence is the proximate cause of the accident, unless some other disconnected cause, which could not have been foreseen by the exercise of ordinary care, has intervened." (*Heiting* v. *C. R. I. & P. R. Co.,* 252 Ill. 466, 96 N. E. 842.)

¶ 99. "If but for the negligence of a telegraph company in missending a tele-

gram a certain fire policy would have been cancelled before the insured property was destroyed by fire, the negligence of the telegraph company is the proximate cause of the loss to the insurance company from the policy not being cancelled." (*P-W Ins. Co.* v. *W. U. Tel. Co.*, 247 Ill. 84, 93 N. E. 134, 30 L. R. A. (N. S.) 1170.)

¶ 100. Damage by fire started by defendant on his property matter for jury. (*Nall* v. *Taylor*, 247 Ill. 580, 93 N. E. 359.)

DEFINED.

¶ 101. "The nearest independent cause which is adequate to produce and does bring about an accident is the proximate cause of the same and supersedes any remote cause." (*Yeates* v. *I. C. R. Co.*, 241 Ill. 205, 89 N. E. 338.)

¶ 102. "If a negligent act does nothing more than furnish a condition by which an injury is made possible, and such condition, by the subsequent act of a third person, causes an injury, the two acts are not concurrent and the existence of the condition is not the proximate cause of the in-

jury." (*Seith* v. *Com. Elec. Co.*, 241 Ill. 252, 89 N. E. 425, 24 L. R. A. (N. S.) 978.)

¶ 103. Kicking of a mule proximate cause of one's injury by being thrown under a coal car.

Knowledge of the mule's vicious habits by plaintiff and defendant is important. (*Miller* v. *Kelley Coal Co.*, 239 Ill. 626, 88 N. E. 196.)

¶ 104. "Where the injurious consequences might have been foreseen as likely to result from the first negligent act or omission, the act of a third person will not excuse the first wrongdoer." (*Jenkins* v. *La Salle C. C. Coal Co.*, 182 Ill. App. 36.)

TEST.

¶ 105. "The general test as to whether negligence is the proximate cause of an injury is whether it is such that a person of ordinary intelligence could have foreseen that an accident was liable to be produced thereby." (*Eaton* v. *Marion County Coal Co.*, 173 Ill. App. 444.)

MATTER OF LAW.

¶ 106. "The question of proximate cause becomes a question of law only where the facts are clear and such that there could be no difference, in the judgment of reasonable men, as to the inference to be drawn therefrom." (*O'Donnell* v. *R-C Mfg. Co.,* 172 Ill. App. 601.)

¶ 107. "An act or omission is the proximate cause of an injury when, under all the attending circumstances, a person of ordinary prudence would have foreseen that such act or omission would probably result in consequent injury to some one." (*The Chicago H. & B. Co.* v. *Mueller,* 203 Ill. 558, 67 N. E. 409.)

DEFINED.

¶ 108. "Proximate damages are such as are the ordinary and natural results of the omission or commission of acts of negligence, and such as are usual and might have been reasonably expected. Remote damages are such as are the unusual and unexpected result, not reasonably to be anticipated from an accidental or unusual

Sec. 15. *Illinois.*

combination of circumstances—a result beyond and over which the negligent party had no control." (*Braun* v. *Craven,* 175 Ill. 401, 406, 51 N. E. 657, 42 L. R. A. 199.)

SECTION 16.

INDIANA.

Test.

¶ 109. "A test of proximate cause is to be found in the probability of injurious consequences fairly to be anticipated from the omission of duty or the negligent act." (*King* v. *Island Steel Co.,* 177 Ind. 201, 207, 97 N. E. 529.)

¶ 110. "If an efficient adequate cause is shown, it may be considered as the real proximate cause, unless another, not incidental to it, but independent thereof, appears to have intervened and caused the accident or injury in controversy." (*Davis* v. *Mercer Lumber Co.,* 164 Ind. 413, 73 N. E. 899.)

See *Cleveland Etc., R. Co.* v. *Powers,* 173 Ind. 118, 88 N. E. 1073, 89 N. E. 485.

Question of Law.

¶ 111. "When the facts are undisputed, what is proximate cause of an injury is a question of law for the court." (*H. & B. Car. Co.* v. *Przeziankowski,* 170 Ind. 1, 15, 83 N. E. 626; *Cumb. Tel. Co.* v. *Kranz,* 48 Ind. App. 67, 95 N. E. 371.)

Sec. 16. *Indiana.*

¶ 112. "In determining the proximate cause of an injury the courts will not so indulge in refinements and subtleties as to defeat substantial justice." (*Indianapolis U. R. Co.* v. *Waddington,* 169 Ind. 448, 459, 82 N. E. 1030.)

DEFINED.

¶ 113. "The efficient and predominating cause of an injury is considered as the legally proximate cause, although subordinate and independent causes may have assisted." (*Bessler* v. *Laughlin,* 168 Ind. 38, 79 N. E. 1033.)

¶ 114. "To deny a recovery of damages negligently caused, on the ground of contributory negligence, it must appear that contributory negligence proximately, actively and contemporaneously contributed to such injury." (*Ind. Trac. Etc. Co.* v. *Kidd,* 167 Ind. 402, 408, 79 N. E. 347, 10 Ann. Cas. 942.)

¶ 115. "Where the proximate result of defendant's negligence is damage to plaintiff, the defendant is liable provided the line of causation is not broken by some intervening responsible agent." (*Flint & W.*

Mfg. Co. v. *Beckett,* 167 Ind. 491, 79 N. E. 503, 12 L. R. A. (N. S.) 924.)

¶ 116. "Where an injury is traceable by natural laws of causation to defendant's wrongful act, such act is the proximate cause of such injury, if such injury according to common experience and observation was a probable one to flow from such wrongful act." (*P. H. & F. M. Roots Co.* v. *Meeker,* 165 Ind. 132, 73 N. E. 253.)

DEFINED.

¶ 117. "The proximate cause is the efficient cause, the one that necessarily sets the other causes in operation, and those merely incidental or instruments of a controlling agency are not proximate, though they may be nearer in time to the result." (*Indianapolis St. R. Co.* v. *Schmidt,* 163 Ind. 360, 71 N. E. 201.)

¶ 118. Fine and imprisonment proximate result of false representation, and defendant is liable therefor. (*Anderson* v. *Evansville Etc. Assn.,* 49 Ind. App. 403, 97 N. E. 445.)

¶ 119. "The proximate cause is the de-

cisive cause; and it may consist in omission as well as commission." (*Republic Iron Co.* v. *Lulu,* 48 Ind. App. 271, 92 N. E. 993.)

¶ **120.** "Negligence to be actionable must be the proximate cause of the injury complained of." (*City of Indianapolis* v. *Slider,* 48 Ind. App. 38, 95 N. E. 334.)

¶ **121.** "A city in constructing its electric light plant is required to anticipate the construction of telephone lines, and the sagging thereof, and cannot avail itself of the doctrine of a responsible, intervening agent, where injury is caused by its charging the telephone wires." (*City of Logansport* v. *Smith,* 47 Ind. App. 64, 93 N. E. 883.)

¶ **122.** "Where it was shown that the defendant was negligent in the first instance, but that the injury complained of would not have resulted, from such negligence, and that the negligent act of an independent, responsible and intervening agent was the direct and proximate cause of the injury complained of, such defendant is not liable." (*Claypool* v. *Wigmore,* 34 Ind. App. 35, 71 N. E. 509.)

¶ 123. "An intervening responsible agent cuts off the line of causation in negligence, except where such agent's intervention could be foreseen as the natural or probable result of the negligent act." (*Brown* v. *A. S. & W. Co.,* 43 Ind. App. 560, 88 N. E. 80.)

¶ 124. "If the intervening act is such as might reasonably have been foreseen or anticipated as a natural or probable result of the original negligence, the original negligence will, notwithstanding such intervening act, be regarded as the proximate cause of the injury." (*Nickey* v. *Steuder,* 164 Ind. 189, 73 N. E. 117.)

See *Fox* v. *Barkeman,* 178 Ind. 572; *Wabash R. Co.* v. *Tippe. T. Co.,* 178 Ind. 113; *City of H.* v. *Jahnke,* 178 Ind. 177; *C. C. Co.* v. *Beard,* 52 Ind. App. 260.

SECTION 17.

IOWA.

¶ 125. "In an action for a death from unlawful sale of liquor, the proximate cause of the death is one of fact, and it is an error to instruct that certain facts, if shown, will establish this element of the case." (*Knott* v. *Peterson, Etc.*, 125 Iowa, 404, 101 N. W. 173.)

¶ 126. "A railroad company is not liable for an injury to a child while riding upon a hand car with section men, at their instance and request, either upon the theory that the child was a passenger, a licensee or a trespasser." "The original wrong in placing the child upon the car, for which the railroad company was in no way responsible, was the proximate cause of the injury." (*Dougherty* v. *Chicago, M. & St. P. Ry. Co.*, 137 Iowa, 257, 114 N. E. 902, 14 L. R. A. (N. S.) 590.)

¶ 127. "The sale of poisonous substances without labeling the same as required by law is negligence *per se*."

"Where several proximate causes contribute to an accident, and each is an effective cause, the result may be attributed to

any or all of the causes." (*Burk* v. *Creamery P. Mfg. Co.*, 126 Iowa, 730, 102 N. W. 793.)

¶ 128. "In an action against a county for injuries caused by the breaking of a defective railing on a bridge, it appeared that one of plaintiff's horses became frightened at a flash of lightning, and settled back in the harness, and was pushed by the other horse against the railing, which gave way. *Held,* that an instruction that, if the accident would not have happened had there been a proper railing on the bridge, then the defective railing was the proximate cause of the injury, but that, if the accident would have happened had the railing been sufficient, then the railing was not the cause of the injury, and plaintiff could not recover, was proper." (*Walrod* v. *Webster Co.*, 110 Iowa 349, 47 L. R. A. 480.)

¶ 129. "Where negligence of the master as shown by the proven circumstances is such that it might have been the proximate cause of servant's injuries, a verdict for the servant will not be disturbed." (*Bell* v. *Bettendorf Axle Co.*, 146 Iowa, 337, 125 N. W. 170.)

Sec. 17. *Iowa.*

¶ 130. "One whose contributory negligence continues up to the very moment of his injury, is not entitled to have his case submitted under the doctrine of the last clear chance." (*Powers* v. *Des Moines City Ry. Co.*, 143 Iowa 427, 121 N. W. 1095.)

¶ 131. "Negligence is not the proximate cause of an injury unless it can be said that but for such negligence the injury would not have happened." (*Tibbitts* v. *Ry. Co.*, 138 Iowa, 178, 115 N. W. 1021.)

¶ 132. "Even though plaintiff's negligence in operating a machine may have been the proximate cause of his injury, yet as it was concurrent with that of defendant in failing to properly guard the machine, that fact would not relieve defendant from liabilities for the injury." (*Miller* v. *Rapids Sash and Door Co.*, 153 Iowa, 735, 134 N. W. 411.)

¶ 133. The burden is upon plaintiff to show negligence of defendant and that his negligence was the proximate cause of the injury. (*Ashcraft* v. *Locomotive Works*, 148 Iowa, 420, 126 N. W. 1111.) Leading case: *Cummings* v. *Ins. Co.*, 153 Iowa, 579, 134 N. W. 79, 30 Ann. Cas. 235.

SECTION 18.

KANSAS.

¶ 134. "In an action to recover the value of an express package that was stolen, it was for the jury to say whether the negligence of the express company was the proximate cause of the loss." (*Filson* v. *Express Co.,* 84 Kan. 614, 114 Pac. 863.)

¶ 135. "Where a carrier wrongfully refuses to deliver goods on demand their subsequent destruction by act of God will not relieve the carrier from liability." (*Henry* v. *Railway Co.,* 83 Kan. 104, 109 Pac. 1005, 28 L. R. A. (N. S.) 1088.)

¶ 136. *Alienation of affection.* (*Powers* v. *Sumbler,* 83 Kan. 2, 110 Pac. 97.)

¶ 137. Violation of statute in employing minor held to be proximate cause of injury. (*Casteel* v. *Brick Co.,* 83 Kan. 534, 112 Pac. 145.)

¶ 138. "The evidence justified a finding that a real estate agent was the procuring cause (proximate cause) of a sale." (*Kluber* v. *Shannon,* 83 Kan. 790, 112 Pac. 626.)

Sec. 18. *Kansas.*

¶ 139. "Defendant's automobile frightened plaintiff's horse and she was injured, it was for jury to say whether defendant's negligence was the proximate cause of the injury." (*McDonald* v. *Yoder,* 80 Kan. 25, 101 Pac. 468.)

¶ 140. "Where a sale of real estate was effected by the joint efforts of two agents with whom it had been listed the commission was due to the one who was the proximate cause of the sale." (*Votaw* v. *McKeever,* 76 Kan. 870, 92 Pac. 1120.)

¶ 141. Ordinarily the question of proximate cause is one for the jury, but where the facts are undisputed, and the court can see that the resulting injury was not probable but remote, it is the duty of the court to determine the question of proximate cause and not send it to a jury. (*Home Oil and Gas Co.* v. *Dabney,* 79 Kan. 820, 102 Pac. 488.)

SECTION 19.

KENTUCKY.

DEFINED.

¶ 142. "A proximate cause is that cause which naturally led to and which might have been expected to produce the result."

"An act or omission may yet be negligent and of a nature to charge a defendant with liability, although no injuries would have been sustained, but for some intervening cause, if the occurrence of the latter might have been anticipated." (*Beiser* v. *C. N. O. & T. P. Ry. Co.,* 152 Ky. 522, 153, S. W. 742.)

¶ 143. "Where the defendant is negligent and its negligence is the proximate cause of the injury there may be a recovery, although there is concurrent negligence of a fellow servant." (*L. & N. R. Co.* v. *Grassman,* 147 Ky. 739, 144 S. W. 1099.)

¶ 144. "Where there is room for difference of opinion between reasonable men as to what is the proximate cause of an injury, the question is one for the jury; but,

where there is no room for difference of opinion, the question, where the facts are undisputed, is for the court." (*Keiffer* v. *L. & N. R. Co.*, 132 Ky. 419, 113 S. W. 433.)

¶ 145. Where one dies of blood poisoning, superinduced by the sting of a poisonous insect or reptile, the sting is the proximate cause of his death. (*Omberg* v. *Accident Association*, 101 Ky. 303, 40 S. W. 909, 72 Amer. State 413.) Leading case: *Walker* v. *Collinsworth*, 144 Ky. 3, 137 S. W. 766, 44 L. R. A. (N. S.) 299

SECTION 20.

LOUISIANA.

¶ 146. "Where, in an action for damages to an orange grove by cattle * * * proximate cause of the damage was held to be a storm, which devastated the country * * * destroying fences, so as to permit cattle to run at large." (*Russell* v. *Fernandez,* 131 La. 76, 59 So. 20.)

¶ 147. "Proximate cause of damage to a dam held to be the nature of the soil beneath the foundation, and not the construction of the work above." (*Blodgett Const. Co.* v. *Cheney Lumber Co.,* 129 La. 1057, 57 So. 369.)

¶ 148. "Proximate cause of an engineer's death by running into an open switch held to be the act of a train wrecker in opening the switch, so that the company was not liable for his death." (*McDaniel* v. *A. L. & G. Ry. Co.,* 127 La. 757, 53 So. 981.)

¶ 149. "One who creates a danger which sooner or later will cause an injury, is re-

Sec. 20. *Louisiana.*

sponsible for the injury resulting, for the judicial cause is the creation of the danger, unless an intervening voluntary act of some person responsible for his act is shown." (*Lee* v. *Powell, &c.*, 126 La. 51, 52 So. 214.)

SECTION 21.

MAINE.

¶ 150. "The driver [of a team] not only having negligently put himself in a place of peril, but having continued negligently to move on to the catastrophe until it happened, his negligence was the proximate cause of the injury, and any negligence of the motorman in charge of the electric car was not independent of the driver's contributory negligence, but contemporaneous with it, and the doctrine of discovered peril does not apply." (*Philbrick* v. *A. S. L. Ry.,* 107 Me. 429, 78 Atl. 481.

¶ 151. "Thoughtless inattention" held to be the "essence of negligence," and the proximate cause, on the part of an automobile driver, of damage done by a frightened horse. (*Towle* v. *Morse,* 103 Me. 250, 68 Atl. 1044.)

¶ 152. Long delay before the dislocation of plaintiff's shoulder was reduced, was the proximate cause of paralysis, and the defendant surgeon was held liable in dam-

Sec. 21. *Maine.*

ages for the delay. (*Hastings* v. *Stetson,* 91 Me. 229, 39 Atl. 580.)

¶ 153. "The doctrine of prior and subsequent negligence is not applicable when the negligence of the plaintiff and that of the defendant are practically simultaneous." (*Butler* v. *Railway,* 99 Me. 149, 58 Atl. 775.) Other leading cases: *Cleveland* v. *Bangor,* 87 Me. 259, 32 Atl. 892, 47 Amer. State 326.

SECTION 22.

MARYLAND.

¶ 154. "The negligence alleged and the injury sued for must bear the relation of cause and effect. The concurrence of both and the *nexus* between them must exist to constitute a cause of action." (*Coughlin* v. *Blaul,* 120 Md. 28, 87 Atl. 766.) Ante § 10, ¶ 70.

¶ 155. "If a gas company is negligent in suffering the escape of gas or in not discovering such escape when warned of it, and a policeman, in searching for the leak with a lighted candle, causes an explosion, the escape of the gas, and not the lighted candle, is the proximate cause of such explosion."

"The failure of the property owner and his agent to inspect the premises, when by so doing they might have discovered the escaping gas, is not contributory negligence. * * *" (*Consol. Gas Co.* v. *Getty,* 96 Md. 683, 54 Atl. 666.)

¶ 156. "By 'proximate cause' is intended an act which directly produced, or con-

Sec. 22. *Maryland.*

curred directly in producing, the injury. By 'remote cause' is intended that which may have happened, and yet no injury have occurred, notwithstanding that no injury could have occurred if it had not happened. No man would ever have been killed on a railway, if he had not gone on or near the track. But if a man does, imprudently and incautiously, go on a railroad track, and is killed or injured by a train of cars the company is responsible, unless it has used reasonable care and caution to avert it, provided the circumstances were not such when the party went on the track as to threaten direct injury, and provided that being on the track he did nothing, positive or negative, to contribute to the immediate injury." (*B. & O. R. Co.* v. *State Use, Etc.*, 33 Md. 542; 29 Md. 421; 31 Md. 357.)

SECTION 23.

MASSACHUSETTS.

¶ 157. A case in which the wrongful conduct of a dog, in causing an automobile to skid to its injury, was the proximate cause and the owner of the dog was held liable. (*Williams* v. *Brennan,* 213 Mass. 28, 99 N. E. 516.)

¶ 158. Negligence, Due care of child, Violation of statute * * * Employer's liability, Proximate cause * * * (*Berdos* v. *T. & S. Mills,* 209 Mass. 489, 95 N. E. 876.)

¶ 159. Real estate agent's services held to be proximate cause of sale, and he entitled to commission. (*Carnes* v. *Finigan,* 198 Mass. 128, 84 N. E. 324.)

¶ 160. "One, who suffers injuries while so intoxicated as to be incapable of standing or walking or taking care of himself in any way, may maintain an action against a person whose negligence in view of his manifest condition was the direct and proximate cause of his injury." (*Black* v. *Railroad,* 193 Mass. 448, 79 N. E. 797, 7 L. R. A. (N. S.) 148.)

Sec. 23. *Massachusetts.*

¶ 161. "In an action by a workman against his employer for injuries from the boom of a derrick falling upon him, if there is evidence warranting a finding that the accident was caused by a defect in the derrick, and there also is evidence from which the jury might infer that the accident was caused by the negligence of a fellow servant of the plaintiff, the question * * * of proximate cause * * * is for the jury * * * upon proper instructions from the presiding judge as to the meaning of 'proximate cause.'" (*Butler* v. *N. E. S. Co.*, 191 Mass. 397, 77 N. E. 764.)

¶ 162. A horse, carefully driven, became frightened by a defect in the highway, freed himself from the control of his driver, and fifty rods from the defect knocked down a person on foot in the highway, who was using reasonable care. The authority charged with keeping the highway in repair is not responsible to the person knocked down, though no other cause intervened between the defect and the injury.

General Rule. "The general rule of law, * * * is that where two or more

causes concur to produce an effect, and it cannot be determined which contributed most largely, or whether, without the concurrence of both, it would have happened at all, and a particular party is responsible only for the consequences of one of these causes, a recovery cannot be had, because it cannot be judicially determined that the damage would have been done without such concurrence, so that it cannot be attributed to that cause for which he is answerable." (*Marble* v. *City of Worcester,* 4 Gray, 395, 397; *Cooley on Torts,* p. 78, note 1.)

¶ **163.** A boy bought some gunpowder without the knowledge or consent of his parents, and put it in a cupboard in his father's house with the knowledge of his aunt, who had charge of the house while his parents were away; a week later his mother gave him some of the powder and he fired it with her knowledge; and later he took, with her knowledge, more of the powder, fired it off and was injured by the explosion.

"HELD, That the injury was not the direct or proximate, natural or probable, re-

sult of the sale of the powder, and the seller was therefore not liable to the child for the injury." (*Carter* v. *Towne,* 103 Mass. 507.)

¶ **164.** "The injury must be the direct result of the misconduct charged; but it will not be considered too remote if, according to the usual experience of mankind, the result ought to have been apprehended. The act of a third person, intervening and contributing a condition necessary to the injurious effect of the original negligence, will not excuse the first wrongdoer, if such act ought to have been foreseen. The original negligence still remains a culpable and direct cause of the injury.

THE TEST: The test is to be found in probable injurious consequences which were to be anticipated, not in the number of subsequent events and agencies which might arise." (*Lane* v. *Atl. Works,* 111 Mass. 136.) Leading case on negligence of children: *McDermott* v. *Railroad,* 184 Mass. 126, 68 N. E. 34, 100 Amer. State, 548.

SECTION 24.

MICHIGAN.

¶ 165. Plaintiff was driving his horse across railroad tracks, saw train approaching, urged his horse; but the locomotive whistle frightened the animal which began prancing instead of advancing out of the way. The rear end of wagon was struck by the train. The engineer was performing a duty in blowing the whistle which blowing was held to be the proximate cause of the injury, and plaintiff could not recover. (*Cavanaugh* v. *M. C. R. Co.,* 175 Mich. 156, 141 N. W. 539.)

¶ 166. Defendant left his team standing unhitched across a footpath in an unpaved street. A child five years of age started upon her sled and coasted down the path under the horses, and was fatally injured by them. Held, That the act of defendant in leaving his team unguarded across the foot path was not the proximate cause of the injury. (*Stall* v. *Laubengayer,* 174 Mich. 701, 140 N. W. 532.)

¶ 167. "Negligence of the driver and owner of an automobile, contributing to a

Sec. 24. *Michigan.*

collision with a street car, will be imputed to a person who was riding with the owner of the motorcar." *Note.*—This is true in an action against the car company, but not in an action against the owner and driver of the motor car. (*Kneeshaw* v. *D. U. Ry.*, 169 Mich. 697, 135 N. W. 903.)

SECTION 25.

MINNESOTA.

¶ 168. "The legal duty of a landlord, as between himself and his tenant, to use ordinary care to keep in repair stairways which are retained under his control, extends to and includes the servants of the tenant."

Breaking of railing was held to be the proximate cause of plaintiff's injury, and the landlord was liable. (*Williams* v. *Dickson,* 122 Minn. 49, 141 N. W. 849.)

¶ 169. "Whatever may have been the original meaning of the maxim, '*Causa proxima et non remota spectatur,*' it has been clearly settled, by a long line of decisions, that what is meant by proximate cause is not that which is last in time or place, not merely that which was in activity at the consummation of the injury, but that which is the procuring, efficient, and predominant cause." (*Russel* v. *Ger. Fire Ins. Co.*, 100 Minn. 528, 111 N. W. 400, 10 L. R. A. (N. S.) 326.)

¶ 170. "Plaintiff was riding horseback in a public street. From some unknown

Sec. 25. *Minnesota.*

cause the horse took fright and backed some thirty or forty feet, until he stepped into a wagonway which, extending into the street, had been made by defendants for the purpose of moving earth from a cellar, which they were excavating on their own lots, up to the street surface. The plaintiff then fell or jumped off, and was pushed into the cellar by the horse. The wagonway and cellar were not guarded or inclosed at the point where the accident occurred. *Held,* that the fright of the horse, and not the failure to guard or inclose the excavation, was the proximate cause of plaintiff's injury." (*La Londe* v. *Peake,* 82 Minn. 124, 84 N. W. 726.)

¶ **171.** "Where the negligence of the defendant and the act of a third person concurred to produce the injury complained of, so that it would not have happened in the absence of either, the negligence was the proximate cause of the injury." (*Johnson* v. *Tel. Co.,* 48 Minn. 433, 51 N. W. 225.)

Defined.

¶ **172.** "The proximate cause of an injury, within the meaning of the law of neg-

ligence, is such cause as operates to produce particular consequences without the intervention of any independent or unforeseen cause or event, without which the injury could not have occurred—such consequences as might reasonably have been anticipated as likely to occur from the alleged negligent act." (*Strobeck* v. *Bren,* 93 Minn. 428.) This definition is approved in (*Russell* v. *Fire Ins. Co.,* 100 Minn. 534, 111 N. W. 400.)

SECTION 26.

MISSISSIPPI.

¶ 173. "In order for liability for an injury to be fastened on a defendant, it is necessary that its negligence should be the proximate cause of the injury, and to constitute proximate cause there must be causal connection between the injury and the negligence." (*Billingsley* v. *I. C. R. R. Co.*, 100 Miss. 612, 56 So. 790.)

¶ 174. "Where a defendant is negligent and his negligence combines with that of another, or with any other independent intervening cause, he is liable, although his negligence was not the sole negligence or the sole proximate cause, and although his negligence without such other independent intervening cause would not have produced the injury." (*Cumb. Tel. & Tel. Co.* v. *Woodham,* 99 Miss. 318, 54 So. 890.)

¶ 175. "Appellant was the owner of a handsome residence situated in the City of Jackson, and had installed therein in the bath room a device known in this record as an 'instantaneous gas heater.' This heater

was so arranged that it was comparatively safe as long as there was a continuous flow of water, but highly dangerous if left burning after the water supply had ceased. On a certain afternoon appellant had lighted the gas and turned on the water, and then left the bath room for a few moments. During her absence the flow of water ceased, and as a result the house was set afire and substantial damage resulted. The cessation in the flow of water was due to the fact that the water company, in order to repair a leaking hydrant, had cut off the water along the street in front of appellant's residence, and no notice of the intention so to do had been given. The flow of water was suspended for about half an hour." The water company had no notice of the fact that the heater had been installed.

HELD: "The damage resulted, not proximately through the failure of the company to supply water, but because of the interposition of an unfamiliar mechanism, the existence of which was unknown to the company." (*Brame* v. *Light, H. & W. Co.*, 95 Miss. 26, 48 So. 728.) 20 Ann. Cas. 1293.

SECTION 27.

MISSOURI.

¶ 176. "The proximate cause of an event is that which, in natural and continuous sequence, unbroken by any new cause, produces the event, and without which the event would not have occurred." (*Kane* v. *Railroad,* 251 Mo. 13, 157 S. W. 644.)

¶ 177. A servant injured by a defective claw-bar by throwing his whole weight upon it, falling when the claw-bar let go: His own negligence was held to be the proximate cause of his injury. (*Harris* v. *Railroad,* 250 Mo. 567, 157 S. W. 564.)

¶ 178. "There is a distinction, both in law and in common usage, between the terms 'hazardous' and 'extra hazardous.'" (*Jackson* v. *Butler,* 249 Mo. 342, 155 S. W. 1071.)

¶ 179. "Whether or not, under all the circumstances, the negligence of the master or the negligence of the servant was the proximate cause of the injury, is, in all cases where there is any doubt, a question

for the jury." (*Yost* v. *Railroad,* 245 Mo. 219, 149, S. W. 577.)

¶ 180. "The plaintiff was employed by defendant to operate a stamping machine. He noticed a defect in the machine and called foreman's attention to it and was told to go ahead with the work. In an action for injuries sustained by the plaintiff soon afterwards, held, that defendant was aware of the danger to plaintiff and was negligent in ordering him to continue operating the machine."

Held also, that the defect in the machine was the proximate cause of plaintiff's injury. (*Tsoulfas* v. *N. E. & S. Co.,* 139 Mo. App. 141, 120 S. W. 1188.)

Leading case: *Ward* v. *Ely-Walker Co.,* 248 Mo. 348, 154 S. W. 478, 45 L. R. A. (N. S.) 550.

SECTION 28.

MONTANA.

¶ 181. "To enable plaintiff * * * * to recover damages, he must show that the negligence charged was a proximate cause of the injury * * * * a cause which in a natural and continuous sequence unbroken by any new, independent cause, produced the injury, and without which it would not have occurred."

"A cause which, in intervening between defendant's negligence and plaintiff's injury, will break the chain of sequence of the former's wrongful act and relieve him from liability therefor, is one which could not have been foreseen or anticipated by him as a probable consequence of his negligence." (*Therriault* v. *England,* 43 Mont. 376, 116 Pac. 581.) (*Mize* v. *Tel. Co.,* 38 Mont. 521, 100 Pac. 971, 16 Ann. Cas. 1189.)

¶ 182. "Where plaintiff's own act is a proximate cause of his injury, he must allege and prove that in doing the particular act he was moved by those considerations for his own safety which would actuate a

reasonably prudent person, similarly situated, to do as he did." (*Nilson* v. *City of K.*, 47 Mont. 416, 420, Citing *Kennon* v. *Gilmer,* 4 Mont. 433, 2 Pac. 21; *Badovinac* v. *Railroad,* 39 Mont. 454, 104 Pac. 543, and *Lyons* v. *Railroad,* 43 Mont. 317, 24 Ann. Cas. 183, 117 Pac. 81.)

SECTION 29.

NEBRASKA.

¶ 183. "The plaintiff's negligence will not defeat a recovery unless it was the sole cause of the plaintiff's injury, or concurred or co-operated with the defendant's negligence as a proximate cause of the accident." (*McGahey* v. *Railroad,* 88 Neb. 218, 129 N. W. 293.)

¶ 184. "If the employment of an infant * * * contrary to * * * a statute, is the proximate cause of an injury to the child, his master is liable therefor." (*Hankins* v. *Reimers,* 86 Neb. 307, 125 N. W. 516.)

¶ 185. "The negligence of one who carelessly places himself in a position exposed to danger cannot as a matter of law be said to be the proximate cause of an injury, if his position was discovered in time to avoid the injury by the use of reasonable care, and such care was not exercised." (*Rail road* v. *Lilley,* 82 Neb. 511, 118 N. W. 103.)

¶ 186. "One who has suffered a direct injury by the unlawful or criminal act of another may maintain an action for the

recovery of damages sustained; but the unlawful sale of a poisonous drug to a minor eighteen years of age, a quantity of which was by said minor administered to another minor to his injury, does not create a cause of action in favor of the father of the latter (against the druggist) * * * * * * * * * as it cannot be said the defendant might reasonably have anticipated that such use would be made of the drug" * * * * * *.

¶ 187. "The illegal sale of croton oil was not the immediate and proximate cause of the injury of which the plaintiff complains. That injury arose, not from the sale of the oil, but from putting it upon the pie which plaintiff's son was induced to eat by another and independent agency—the act of Barron, the purchaser." (*McKibbin* v. *Bax & Co.*, 79 Neb. 577, 581, 113 N. W. 158, 13 L. R. A. (N. S.) 646.)

SECTION 30

NEVADA.

¶ 188. A proper instruction: "In order that negligence on the part of the plaintiff, may defeat his recovery, such negligence must be a proximate cause of his damage and contribute thereto. If his negligence is remote, and without it he still would have suffered the damage, then it is not contributory in the sense of the law." (*O'Connor* v. *Ditch Co.*, 17 Nev. 245.)

¶ 189. "The rule of law, which releases a defendant from responsibility for damages caused by his negligence when there is contributory negligence on the part of the plaintiff, is limited to cases where the act or omission of plaintiff was the proximate cause of the injury." (*Loganbaugh* v. *Railroad,* 9 Nev. 271.)

¶ 190. Comparing "*immmediate*" and "*proximate*" as used by the trial judge in an instruction, the Court says: "Proximate Cause is oftener used, and is probably better, yet it means that which immediately precedes and produces the effect

as distinguished from remote. In examining the authorities it will be found that 'immediate' and 'proximate' are indiscriminately used to express the same meaning.'' (*Loganbaugh* v. *Va. City T. Co.,* 9 Nev. 271, 294.)

Leading Case: *Murphy* v. *So. P. Co.,* 31 Nev. 120, 101 Pac. 322, 21 Ann. Cas. 502.

SECTION 31.

NEW HAMPSHIRE.

¶ 191. "Let dogs delight to bark and bite,
For God hath made them so"
truly expresses the nature of such animal. A man who irritates, abuses, or cruelly treats a dog excites into active operation against himself these natural forces, which, until the exciting cause, were dormant and harmless; and if he receives an injury from the dog when thus excited, he receives it as truly from his own act as he would if he shot himself, or did himself bodily harm by exciting into activity any other of nature's forces. He cannot recover damages of the owner of the instrument which he uses wilfully or recklessly to his injury." (*Quimby* v. *Woodbury,* 63 N. H. 370.)

¶ 192. "The term proximate cause was substantially the same, originally, as the *causa causans,* or the cause necessarily producing the result. But the practical construction of the term by the courts has now come to be—the cause which naturally led to, and which might have been expected to produce, the result." (*State* v. *Railroad,* 52 N. H. 528.)

SECTION 32.

NEW JERSEY.

¶ 193. "In cases where fire is negligently started, but is not immediately communicated to the property destroyed, but is communicated from one building to another until it reaches the property destroyed, causal connection will only cease when, between the negligence and the damage, an object is interposed which would have prevented the damage, if due care had been taken."

"Where a fire originates in the carelessness of a defendant, and is carried directly by a material force, whether it be the wind, the law of gravitation, combustible matter existing in a state of nature, or a running stream, to the plaintiff's property, and destroys it, defendant is legally answerable for the loss." (*Kuhn & Neeb* v. *Railroad,* 32 N. J. Eq. 647.)

¶ 194. "If the deceased, acting in good faith, and without negligence on her part, attended to such household duties as she thought she might prudently perform, and

Sec. 32. *New Jersey.*

in so doing produced a hemorrhage from the original wound she had received as a result of the negligence of the defendant, from which death ensued, the defendant is not thereby relieved of the consequences of its wrongful act." (*Batton* v. *P. S. C.*, 75 N. J. Law, 857, 69 Atl. 164, 18 L. R. A. (N. S.) 640.)

¶ 195. "An express wagon, driven by a servant of the defendant along a public highway, struck the hind wheel of a wagon that was being loaded from the sidewalk, forcing it against the horse, which was standing unhitched in the street, whereat the horse took fright and ran away. To avoid being struck by the runaway horse, the plaintiff jumped aside and broke his leg over a board pile in the street, whereupon he sued the defendant—Express Company—and was non-suited. *Held*, that the non-suit was erronious."

"The striking of the standing wagon by the defendant's wagon was unquestionably the initial force that set in motion the train of circumstances by which the plaintiff was injured, none of which had their rise in any

intervening force or other cause. The board pile over which the plaintiff fell, while it was a condition of his injury, was not its cause." (*Collins* v. *Express Co.,* 72 N. J. L. 231, 62 Atl. 675, 5 L. R. A. (N. S.) 373, Citing 21 Am. & Eng. Ency. Law 492, 494; *Belles* v. *Kellner,* 38 vroom 255, and *Scott* v. *Shepherd,* 1 Smith's Leading cases, 754—which is the English Squib case.)

NOTE. The decision in *Collins* v. *Express Co.,* is open to doubt. The foresight enjoined by it seems extraordinary. See *Hobbs* v. *Railroad; Murdock* v. *Railroad,* cited in section 57, and *Marble* v. *City of Worcester,* cited in section 23.

SECTION 33.

NEW MEXICO.

¶ 196. "It was not the intention of the legislature, in the enactment of sections 2308, 2310, * * * * to change the common law rule exempting a master from liability to his servant for the negligence of a fellow servant."

"Where * * * the declaration alleged that defendant failed to furnish the deceased * * * with a properly constructed car * * * but instead thereof wrongfully, negligently, and over deceased's protest, furnished him with an unsafe box car without doors or windows in the ends, * * * through which approaching danger might be seen and averted * * * through the negligence of its servants, one of defendant's trains ran against the rear of the train driven by deceased, broke the same into splinters, and deceased was struck by its locomotive and flying splinters and died from the effects of the injuries thus received * * * * *. *Held,* "The proximate cause of the accident was the negligence of the fellow servants operating the second

train, not the failure of the defendant to furnish a proper car. The action cannot therefore be sustained. Nor could it be sustained if it were conceded that the proximate cause was the joint negligence of the deceased's fellow servants and the failure of the defendant to furnish, within a reasonable time, a proper car." (*Lutz* v. *Railroad*, 16 N. M. 496, 30 Pac. 912.)

SECTION 34.

NEW YORK.

¶ 197. "Plaintiff's intestate, who was severely injured by a taxicab under circumstances justifying the finding that the defendant was guilty of and plaintiff's intestate free from negligence, died the second day thereafter of delirium tremens. A physician testified, 'I should say with reasonable certainty the injury precipitated his attack of delirium tremens * * * * *' *Held*, that defendant's negligence was the proximate cause of the death." (*McCahill* v. *N. Y. Trans. Co.*, 201 N. Y. 221, 94 N. E. 616.)

¶ 198. Where several proximate causes contribute to an accident, and each is an efficient cause, without which the accident would not have happened, it may be attributed to all or any of them, and the number of proximate causes is no defense. (*Rossiter* v. *Peter C. G. Factory*, 140 N. Y. Supp. 296.)

Other leading cases: (*Ring* v. *City*, 77

N. Y. 83, 33 Amer. R. 574; *Sweet* v. *Perkins,* 196 N. Y. 483, 90 N. E. 50.)

¶ 199. "Where an agent sent a telegram to his principal for authority to make a contract, and the telegram in reply was not in response to the telegram sent, but showed an error in the transmission of one or the other of the telegrams, and the agent, without receiving authority from his principal, made the contract, causing damages to the principal, the negligence of the telegraph company * * * * * was not the proximate cause of the injury: but the negligence of the agent in making the contract, in view of the telegrams, was the intervening proximate cause." (*Willoughby* v. *W. U. Tel. Co.,* 133 N. Y. S. 268.)

¶ 200. "If a railroad company negligently set fire to wood in one of its own sheds, and by the spreading of the fire, a dwelling house, at a distance of 130 feet from the shed, is consumed, the company is not liable for the loss; the negligent act is not the proximate cause of the loss."

"A house in a populous city takes fire,

Sec. 34. *New York.*

through the negligence of the owner or his servant; the flames extend to and destroy an adjacent building: Is the owner of the first building liable to the second owner for the damages sustained by such burning?''

The Court answers this questin in the negative, and holds that the proximate cause of the burning of the first house was the remote cause of the destruction of the second. (*Ryan* v. *Railroad*, 35 N. Y. 210, 91 Amer. D. 49.) This case is distinguished in *Lowry* v. *Ry. Co.*, 99 N. Y. 164, 52 Amer. R. 12.) This decision was followed and approved in *Penn. R. Co.* v. *Kerr*, 62 Pa. St. 353.)

¶ 201. ''He who by his negligence or misconduct creates or suffers a fire upon his own premises, which, burning his own property, spreads thence to the immediate adjacent premises and destroys the property of another, is liable to the latter for the damages sustained by him.'' (*Webb* v. *Railroad*, 49 N. Y. 420, 10 Amer. R. 389.)

NOTE. These cases of *Ryan* and *Webb* are said to be in harmony. In the second

the court refers to and approves the doctrine laid down in the first.

In support of the *Webb* case see *Higgins* v. *Dewey*, 107 Mass. 494, 9 Amer. R. 63.)

See *Laidlaw* v. *Sage*, 158 N. Y. 73; *Leeds* v. *New York Tel. Co.*, 178 N. Y. 118.

SECTION 35.

NORTH CAROLINA.

DEFINED.

¶ 202. "The proximate cause of an event must be understood to be that which in natural and continuous sequence, unbroken by any new and independent cause, produces that event, and without which such event would not have occurred. Proximately in point of time or space, however, is no part of the definition." (*Ward* v. *Railroad*, 161 N. C. 179, 76 S. E. 717.)

¶ 203. "Neither the distance traveled by the fire, though lands of other parties intervened, not the time elapsing between the initial fire and the final conflagration which destroyed the plaintiff's property, is conclusive against the existence of proximate cause, that is, that the second fire was proximately caused by the first. The connection of cause and effect must be established; the breach of duty must not only be the cause, but the *proximate cause* of the damage to the complaining party." (*Hardy* v. *Lumber Co.*, 160 N. C. 113, 75 S. E. 855.)

Sec. 35. *North Carolina.*

¶ 204. Stump in street—plaintiff thrown from vehicle in the night—electric light revealing stump—plaintiff had knowledge of stump—"*Held,* the injury complained of was proximately caused by the inattention of the plaintiff" * * * * *. (*Owens* v. *Charlotte,* 159 N. C. 332, 74 S. E. 748.)

¶ 205. "On reaching a railroad crossing, and before attempting to go upon the track, a traveler must use his sense of hearing to the best of his ability under the existing and surrounding circumstances—he must look and listen in both directions for approaching trains, if not prevented from doing so by the fault of the railroad company, and if he has time to do so; and this should be done before he has taken a position exposing him to peril * * * * this being required so that his precaution may be effective."

"If he fails to exercise proper care within the rule stated, it is such negligence as will bar his recovery: Provided always, it is the proximate cause of his injury." (*Johnson* v. *Railroad,* 163 N. C. 431, 79 S. E. 690.) (*Cooper* v. *Railroad,* 16 N. C. 150.)

Sec. 35. *North Carolina.*

¶ 206. "When under the express terms of a policy of insurance the insurer is only liable when an injury results from accidental means 'directly and independently of all other causes' the rule of proximate cause, as applied to actions of negligence, will not be applied" * * * * *. (*Penn.* v. *Ins. Co.*, 158 N. C. 29, 73 S. E. 99.)

Leading case: *Smith* v. *Railroad*, 145 N. C. 98, 58 S. E. 799, 122 Amer. State, 423. See *Abernathy* v. *Railroad*, 164 N. C. 91.

SECTION 36.

NORTH DAKOTA.

¶ 207. "In an action in negligence the question whether the alleged fault of the defendant, or failure on his part to perform a legal duty, was the proximate cause of the injury, is one of law for the court, to be determined upon the material facts presented" * * * *. (*City of G. F.* v. *Paulsness,* 19 N. D. 293, 123 N. W. 878.)

¶ 208. "In order to disclose a cause of action for deceit, the complaint must show that the loss or damage was the proximate effect caused by the alleged misrepresentations." (*The M. McCarthey Co.,* v. *Halloran,* 15 N. D. 71, 106 N. W. 293.)

¶ 209. "The defendants, * * * encamped in a vacant house * * * in an open prairie. A prairie fire originated near the house, and threatened its destruction * * * *. A back fire was set by defendant near the house, and allowed to run until it joined the main fire, which destroyed the property of plaintiff's intestate. *Held,* * * * * that the original fire was the proximate cause

of the loss." (*Owen* v. *Cook*, 9 N. D. 134, 8 N. W. 285, 47 L. R. A. 647.)

¶ 210. "It is only when but one conclusion can reasonably be drawn from conceded or undisputed facts that the question of negligence becomes purely a question of law." (*Heckman* v. *Evenson*, 7 N. D. 173, 73 N. W. 427.)

Late case: *Seckerson* v. *Sinclair*, 24 N. D. 625, 140 N. W. 239.

SECTION 37.

OHIO.

¶ 211. "In an action to recover damages for injuries sustained through the negligence of another, the law regards only the direct and proximate results of the negligent act, as creating a liability against the wrongdoer."

"In contemplation of law, an injury that could not have been foreseen or reasonably anticipated as the probable result of an act of negligence, is not actionable." (*Miller* v. *Railroad,* 78 O. S., 309, 85 N. E. 499.)

¶ 212. "What was the proximate cause of an injury, is usually a mixed question of law and fact; but where the controlling facts are conceded or found, it is a question of law for the court." (*Lüidtke* v. *Railroad,* 69 O. S. 384, 69 N. E. 653.)

¶ 213. Where a railroad employee in the course of his work places a torpedo on the track and leaves it unguarded where the public, including children, has been accustomed to pass, and a boy, in passing that way finds it, and not knowing what it is,

Sec. 37. *Ohio.*

shows it to his playmates, and then proceeds to open it causing an explosion which injures him: The Company is liable on the ground that the negligent act of its employee in leaving the torpedo there was the proximate cause of the injury. (*Harriman* v. *Railroad*, 45 O. S. 11, 12 N. E. 451, 4 Amer. St. 507.)

¶ 214. "In an action against a mill owner for damages to property caused by fire negligently or carelessly thrown by sparks from the smoke stack of the mill and carried to the property by a gale of wind blowing at the time in the direction of the property, by which fire the same was damaged; where the conditions continue the same as when the negligent and careless act was done, and no new cause intervenes, it is no defense that the fire first burned an intervening building and was thence communicated by sparks and cinders in the same manner to the buildings in which such fire consumed the property, though the buildings were separated by a space of two hundred feet." (*Adams* v. *Young*, 44 Ohio S. 80, 4 N. E. 599, 58 Amer R. 789.)

Sec. 37. *Ohio.*

¶ **215.** "A railway company, by its train, unlawfully obstructed a village street. S., therefore, walked around the rear of the train, entered another street, and there, having selected one of several routes to her home, slipped on some ice, fell, and sustained serious injury. The same railway company had placed the ice there in the process of clearing its track, which occupied part of the street. The street was laid out after the railway was in use, and the rights of the public in said street were subject to the rights of the railway company.

HELD: 1. The proximate cause of the injury was the placing of the ice in the street.

2. If the railway company was not in fault in so placing the ice, it was not liable for the injury caused by the fall." (*Railway* v. *Staley,* 41 Ohio S. 118.)

Leading case: *Miller* v. *Railroad,* 78 O. St. 309, 85 N. E. 499, 125 Amer. State, 699.

SECTION 38.

OKLAHOMA.

Last Clear Chance.

¶ 216. "The doctrine of last clear chance is recognized by the courts, as an exception to the general rule that the contributory negligence of the person injured will bar a recovery, without reference to the degree of negligence on his part, and under this exception to the rule the injured may recover damages for an injury resulting from the negligence of the defendant although the negligence of the injured person exposed him to the danger of the injury sustained, if the injury was more immediately caused by the want of care on the defendant's part, to avoid the injury, after discovering the peril of the injured person." (*Clark* v. *Railroad,* 24 Okla. 764, 108 Pac. 361.)

¶ 217. "It is a well established rule that in a suit for damages for personal injuries, although the defendant may be shown to have been negligent in some manner, yet, unless the negligence so shown was the

proximate cause of the injury complained of, no recovery can be had on account of such negligence." (*Railroad* v. *Hess,* 34 Okla. 615, 126 Pac. 760.)

¶ **218.** "Where an employee while working close to a horse-power corn sheller slipped from a wagon and upon striking the ground threw out his hand to steady himself and was injured by the hand coming in contact with certain moving cogs in the machine negligently left unguarded; *held,* that the unguarded cogs were the proximate cause of the injury." (*Bales* v. *McConnell,* 27 Okla. 407, 112 Pac. 978.)

SECTION 39.

OREGON

¶ 219. "'Proximate cause' is probable cause. It does not mean the last act of cause or act nearest to the injury, but such act wanting in ordinary care as actually aided in producing the injury as a direct and existing cause. It need not be the sole cause, but must be a concurring cause, such as might reasonably have been contemplated as involving a result under the attending circumstances" * * * *. (*Brown* v. *Railroad*, 63 Oregon, 396, 128 Pac. 38.)

¶ 220. "'Proximate cause' is any act or omission that immediately produces or fails to prevent the injury, or that which directly puts into operation another agency or force, or interposes an obstacle whereby injury is inflicted that would not have happened except for the negligent act or omission." (*Wells* v. *Railroad*, 59 Oregon, 165, 116 Pac. 1070.)

¶ 221. "'Proximate cause' is defined generally as the cause which leads to or may naturally be expected to produce the

result." (*Palmer* v. *Portland Ry. &c.,* 56 Oregon 262, 108 Pac. 211.)

¶ 222. "Although one's own negligence has brought him into danger, he cannot be willfully or wantonly hurt by another with impunity."

"'The last clear chance doctrine' arises where plaintiff has been negligent in placing himself in a position of danger, but that negligence has spent its force at the time he received an injury owing to the negligence of defendant." (*Scholl* v. *Belcher,* 63 Oregon, 310, 127 Pac. 968.)

¶ 223. "To authorize recovery by an employee for injury because of the employer's negligent failure to warn him of a danger, such negligence must have been the proximate cause of the injury."

"A 'proximate cause' is a cause which leads to, or might naturally be expected to produce, the result." (*Elliff* v. *Railroad,* 53 Oregon 66, 99 Pac. 76.)

See *Buchanan* v. *L. A. H. Co.,* 66 Oregon, 503.

SECTION 40.

PENNSYLVANIA.

DEFINED.

¶ 224. "The proximate cause of an accident imposing liability is the dominant and efficient cause which acts directly or necessarily sets in motion other causes, not created by an independent agency, and which naturally and reasonably results in injury as a consequence of the primary act, under the circumstances, might and ought to have been anticipated in the nature of things by a man of ordinary intelligence and prudence, although, in advance, it might have seemed improbable and the precise form in which the injury actually resulted could not have been foreseen. The succession of connected events springing out of the primary causal act, and not time or distance intervening between it and its injurious consequences, is, except as bearing upon the question of improbability, the test in the application of the rule." (*Wallace* v. *Keystone Auto Co.*, 239 Pa. S. 110, 86 Atl. 699.)

¶ 225. "Where there are two efficient, independent, proximate causes of an injury sustained on a highway, the primary cause being one for which the party charged with negligence is not responsible, and the other being a defect in the highway, the injury must be referred to the former and not to the latter." (*Thubron* v. *Dravo Co.,* 238 Pa. S. 443, 86 Atl. 292.)

¶ 226. A case in which it was held that the conduct of a thirteen year old boy was the proximate cause of his death, and not the negligence of the electrical light company in having an uninsulated wire. (*Trout* v. *Phila. E. Co.,* 236 Pa. S. 506, 84 Atl. 697.) (*Mullen* v. *W. B. G. & E. Co.,* 229 Pa. St. 54, 77 Atl. 1107.)

¶ 227. It has been uniformly held in Pennsylvania, and it is unquestionably the law, where a horse in use upon a highway is frightened, at an object for the presence of which the road authorities are not responsible, and frees himself wholly or in part from the control of his master and injures himself or master or both against an obstruction or defect in the highway no

recovery can be had against the road authorities, for the reason that the fright of the horse is the proximate cause of the injury, and the master having lost control of the horse temporarily is not in position to use such reasonable care and prudence in the use of the highway as the law requires of him. (*Thubron* v. *Dravo Contr. Co.*, 238 Pa. St. 443, 86 Atl. 292, 44 L. R. A. (N. S.) 699; *Jackson Tp.* v. *Wagner*, 127 Pa. St. 184, 17 Atl. 903.)

¶ **228.** "Although a township be guilty of negligence in not repairing a defect in a highway, yet where an injury results from an extraordinary outside cause concurring with the defect in the highway, the township is not liable; but the concurrence of an ordinary outside cause, which should have been foreseen by the public authorities, will not relieve the township from responsibility for the negligence." (*Schaeffer* v. *Jackson Tp.*, 150 Pa. St. 145, 24 Atl. 629; *Willis* v. *County*, 183 Pa. St. 184, 38 Atl. 621; *Nicholas* v. *Pittsfield Tp.* 209 Pa. St. 240, 58 Atl. 283.)

SECTION 41.

RHODE ISLAND.

¶ 229. "The negligence of a responsible agent, intervening between the defendant's negligence and the injury suffered, breaks the casual connection between the two."

"If, however, the intervening act or negligence is a natural or probable result of the original negligence, the latter will be regarded as the proximate cause of the injury." (*Mahogany* v. *Ward,* 16 R. I. 479, 17 Atl. 860.)

¶ 230. "A. was injured by a horse driven by B. The horse was frightened by the overturn of a sleigh to which it was harnessed, and the overturn was caused by a heap of snow and ice wrongfully made and left in the highway by C.

A. sued C. to recover damages; *held,* that the wrongful act of C. was in law the proximate cause of A's injury." (*Lee* v. *Railroad,* 12 R. I. 383.)

Sec. 41. *Rhode Island.*

¶ 231. "Where a traveler on a highway is injured, and the injury results from a combination of two causes, both proximate, one a defect in the highway and the other a natural cause or a pure accident, the town is liable * * * *, provided his injury would not have been sustained but for the defect in the highway." (*Hampson* v. *Taylor, Etc.*, 15 R. I. 83, 23 Atl. 732.)

SECTION 42.

SOUTH CAROLINA.

¶ 232. "Where a public officer pays out public funds without compliance with a mandatory statute, the law presumes his act is the direct cause of the loss to the county." (*County of R.* v. *Amer. Sur. Co.*, 92, S. C. 329, 75 S. E. 549.)

¶ 233. "Where a servant in charge of machinery, informed as to its condition, undertakes to repair the machinery while running in a dangerous way, instead of in a safe way, at hand and apparent, not being instructed to do it either way, and his clothing is caught by a set screw on a revolving shaft, not negligently set, he assumes the risk of repairing the machinery in the dangerous way and his negligence is the proximate cause of the injury." (*Pollard* v. *F. I. Oil Co.*, 86 S. C. 69, 68 S. E. 132.)

¶ 234. "To say in charge if 'defendant's negligence was the cause of his death, then the plaintiff would be entitled to recover,' is not harmful where in another part of

the charge the jury were instructed, plaintiff could not recover unless negligence of defendant was the proximate cause of the death." (*Lamb* v. *Railroad*, 86 S. C. 106, 67 S. E. 958.)

¶ 235. "That a train failed to stop at a station to which a passenger had paid his fare is evidence of negligence, and the presumption that injury to passenger was due to carrier's negligence carries issue of proximate cause to the jury." (*Davis* v. *Railroad*, 83 S. C. 66, 64 S. E. 1015.)

¶ 236. "Where a horse driven along a highway gets his foot fastened in a hole in a bridge, from which he cannot extricate it, and in which position he was likely to break his leg, its injury being the direct and proximate result of negligence on part of the county, and its owner in attempting to help the horse is injured by the horse falling on him and breaking his leg, the injury to the man is the proximate result of the negligence of the county." (*Cooper* v. *R. County*, 76 S. C. 202, 56 S. E. 958, 121 Amer. State 946.)

¶ 237. "Even if a defendant carrier was negligent in not keeping a proper lookout,

the recovery should not be had for injury to one lying on the track in a drunken, helpless condition, which was the proximate cause of the injury as this constituted contributory negligence." (*Craig* v. *A-A Ry.*, 93 S. C. 49.)

Leading case: *Martin* v. *So. Ry.*, 77 S. C. 370, 58 S. E. 3, 122 Amer. State, 574.)

SECTION 43.

SOUTH DAKOTA.

¶ 238. "Proximate cause of an injury is the immediate cause, it is the natural and continuing sequence, unbroken by any intervening cause, preceding the injury and without which it could not have happened."

"Proximate cause is the probable cause," "Remote cause means improbable cause." (*Joslin* v. *Linden*, 26 S. D. 420, 425, 128 N. W. 500.)

¶ 239. In an action by a widow to recover damages for the sale of intoxicating liquors to her deceased husband, who committed suicide, evidence that deceased was intoxicated the greater portion of the time for months next before his death, and that during that time defendant furnished him with more or less of the liquors producing his intoxication, is sufficient to justify the jury in finding that the sale of intoxicating liquors by defendant was the proximate cause of the death. (*Garrigan* v. *Kennedy*, 19 S. D. 11, 8 Ann. Cas. 1125.)

¶ 240. "Proximate and remote damages are the result of proximate and remote

causes, reasoning in an inverse order. Strictly speaking, there is no remote cause and no remote damages; the proximate cause is that which produces the damage. The remote cause is used, by comparison, as the irresponsible agent which seeks shelter behind the responsible one. The proximate cause is the *vis major* which intervenes and usurps the place of the primary force, or unites with and overcomes it, so as to become the principal and real cause of the damage sustained, or it is the primary cause, traced back through intervening and intermediate causes, by natural and continuous succession, from the injury resulting to the wrong committed. The intermissions existing, the time elapsing, or minor cause intervening, do not affect the conclusion, so that the original cause be continuously operative as the principal factor in producing the final result." (*Pielke* v. *Railroad,* 5 Dakota (1889) 444, 41 N. W. 669.)

Leading case: *Loiseau* v. *Arp,* 21 S. D. 566, 114 N. W. 701, 130 Amer. State, 741.)

SECTION 44.

TENNESSEE.

DEFINED.

¶ 241. "The proximate cause of an injury may, in general, be stated to be that act or omission which immediately causes or fails to prevent the injury; an act or omission occurring or concurring with another, which, had it not happened, the injury would not have been inflicted, notwithstanding the latter."

"Illustrating by the facts: It is true that the fire destroyed the cotton, and in that sense caused the loss, but it appears that, notwithstanding the occurrence of the fire, the cotton would not have been burned by it had not the breaking of the train while it was being removed happened, so that, but for this fact, the cotton would have been saved. This (the breaking of the train) must therefore be held to be the proximate cause of the loss, and if it was the result of negligence, the carrier must answer for it." (*Deming* v. *M. C. Co.*, 90 Tenn. 310, 353, 17 S. W. 99, 13 L. R. A. 518.)

The above definition has been repeatedly

approved in Tennessee (*Mayor of City of Tennessee* v. *F. Co.*, 127 Tenn. 107, 114.)

¶ 242. In an action brought to recover damages for wrongfully suing out an injunction—not on the bond, but against the complainants, in the injunction suit, personally, it was held that the suing out of the injunction was not the proximate cause of the injury. (*Hawkins* v. *Hubbell*, 127 Tenn. 315, 154 S. W. 1146.)

¶ 243. This court is inclined to the theory that after all "to a sound judgment must be left each particular case." that is, that there can be no inflexible rule for the application of the doctrine of proximate cause. (*Chattanooga L. & P. Co.* v. *Hodges*, 109 Tenn. 331, 70 S. W. 616, citing 1 Strob., 547, 47 Amer. Dec. 578, 7 Wall. 49.)

Leading case: *Railroad* v. *Kelly*, 91 Tenn. 699, 20 S. W. 312, 17 L. R. A. 691, 30 Amer. State, 902.

SECTION 45.

TEXAS.

¶ 244. Where, by the neglect of defendant's conductor to give a passenger a check showing her right to pass over a connecting line, she was compelled to borrow money from a fellow passenger to pay her fare, in the absence of evidence that the conductor had reason to contemplate such result as a probable consequence of his default, damages due to her humiliation in having to so borrow money were, as a matter of law, not recoverable; the question of proximate result could not be left to the jury. (*Railroad* v. *Welch*, 100 Tex. 118, 94 S. W. 333.)

DEFINED.

¶ 245. "Negligence, or an act not amounting to wanton wrong, is the proximate cause of an injury which, in the light of attending circumstances, ought to have been foreseen as a natural and probable consequence of the negligence or wrongful act."

"The intervention of an independent

agency, bringing about the result, does not necessarily render the original cause remote, but bears more directly, on the question whether the injury ought, under all the circumstances, to have been foreseen, and, where this latter fact appears, the original negligent act ought to be deemed actionable."

THE TEST.

The test is whether a reasonably prudent man, in view of all the facts, would have anticipated the result, not necessarily the precise actual injury, but some like injury, produced by similar intervening agencies." (*Railroad* v. *Bigham,* 90 Tex. 223, 38 S. W. 162.)

¶ 246. "If, subsequent to the original wrongful or negligent act, a new cause has intervened, of itself sufficient to stand as the cause of the misfortune, the former must be considered as too remote. The original wrongful or negligent act will not be regarded as the proximate cause, where any new agency, not within the reasonable contemplation of the original wrongdoer

Sec. 45. *Texas*

has intervened to bring about the injury." (*Seale* v. *Railroad*, 65 Tex. 274.)

¶ 247. "A defendant is liable for injuries to another when its negligence is merely a concurring and not the sole cause of the injuries." (*Railroad, Etc. Co.* v. *Street*, 57 Tex. C. P. 194.)

¶ 248. Damages which could not be reasonably anticipated as the probable result of an act or omission, cannot be held to have been proximately caused by such act or omission." (*Railroad* v. *Reed*, 56 Tex. C. P. 453.)

¶ 249. "If an accident occurs from two causes both due to negligence of different persons, but together the efficient cause, then all the persons whose acts contribute to the accident are liable for an injury resulting, and the negligence of one furnishes no excuse for the negligence of the other." (*Railroad* v. *Edwards*, 55 Tex. C. P. 543.)

¶ 250. "Where one was killed by a train while walking too close to a railway track, if he was negligent in choosing such place to walk instead of another which was safe

there could be no issue as to such negligence being the proximate cause of his injury nor necessity to qualify, by submitting the question whether it was so." * * * * (*Railroad* v. *Wall,* 102 Tex. 362, 116 S. W. 1140.)

¶ **251.** Proximate cause of an injury is a mixed question of law and fact which should be submitted to the jury, and not one of law only, such as the Supreme Court could determine. (*Railroad* v. *Johnson,* 101 Tex. 422, 108 S. W. 964.)

SECTION 46.

UTAH.

¶ 252. "Where plaintiff who was delivering a parcel to an occupant of defendant's apartment building became frightened at a horse standing in the rear of the building, and in endeavoring to avoid the horse was injured by falling into an open cellarway, defendant was not liable, as the unguarded cellarway was not the proximate cause." (*Anderson* v. *Bransford,* 39 Utah 256, 116 Pac. 1023.)

¶ 253. "Where an act is such that a person in the exercise of ordinary care could have anticipated as likely to result in injury, then he is liable for an injury actually resulting from it, although he could not have anticipated the particular injury which did occur." (*Stone* v. *Railroad,* 32 Utah, 185, 89 Pac. 715.)

¶ 254. "Where the plaintiff in a suit to recover damages for injuries shows by his own evidence that he was guilty of contributory negligence which was the proximate cause of such injuries, the defense is re-

lieved from the burden of proving such negligence, and the plaintiff cannot recover." (*Silcock* v. *Railroad,* 22 Utah, 179.)

¶ 255. "Where the injured party was negligent in the first instance, such negligence will not defeat his action, if it be shown that the defendant might have avoided the injury by the exercise of ordinary care and reasonable prudence. As to whose negligence was the proximate cause of the accident is a question of fact for the jury." (*Hall* v. *Railroad,* 13 Utah, 243.)

Leading case: *Soule* v. *Weatherby,* 39 Utah, 580, 118 Pac. 833, 30 Ann. Cas. 75.

SECTION 47.

VERMONT.

¶ 256. "The voluntary intoxication of a person does not relieve him from exercising the care required of a sober man in the same circumstances, and so, if failure to exercise that care contributes to the injury, he is guilty of contributory negligence and cannot recover for the concurrent negligence of another." (*Burleson* v. *M. L. & P. Co.*, 86 Vt. 492, 86 Atl. 745.)

¶ 257. "Due caution means caution commensurate with existing hazard." (*Van Dyke* v. *Ry. Co.*, 84 Vt. 212, 78 Atl. 958.)

¶ 258. "One negligently starting a fire held liable for the consequent damages, though caused by the change in the direction of the wind." (*Ide* v. *Railroad*, 83 Vt. 66, 74 Atl. 401.)

¶ 259. Failure of railroad telegraph operator to transmit report of departure of extra train to dispatcher held proximate cause of a collision between the extra and a regular train." (*Mahoney* v. *Railroad*, 78 Vt. 244, 62 Atl. 722.)

¶ **260.** "Negligence is a shortage of legal duty that causes injury." (*Corbin* v. *Railroad,* 78 Vt. 458, 63 Atl. 138.)

¶ **261.** Defendant's duty to keep bridge in repair, plaintiff, traveler upon the bridge at the time of accident, in the exercise of due care, and the insufficiency of the bridge must have been the proximate cause of the injury." (*Mobus* v. *Waitsfield,* 75 Vt. 122, 53 Atl. 775.)

¶ **262.** "The report distinctly shows that the injury is to be attributed to two proximate and concurring causes—the one being the insufficiency or defect in the highway, and the other the darkness of the night."

"It has been settled in this State that where the injuries sustained were caused in part by a defect in a highway and in part by a pure accident, or such an accident as could not have been prevented by ordinary care and prudence, the town will be liable." (*Swift* v. *Newberry,* 36 Vt. 355 357.)

SECTION 48.

VIRGINIA.

¶ 263. "The plaintiff is entitled to recover all such damages as are the natural and proximate results of the wrongful act complained of * * * * * The rule is well established and uniformly enunciated by the courts, but there is often difficulty in applying it to a particular case. The plaintiff must show not only that he has sustained damages, but also show with reasonable certainty the extent of it, and it must appear that such damage was the natural and proximate result of the injury." (*Burrus* v. *Hines,* 94 Va. 413, 416, 26 S. E. 875.)

¶ 264. "The law always refers an injury to the proximate, not to the remote cause. To warrant the finding that an act of mere negligence is the proximate cause of an injury, it must appear that the injury was the natural and probable consequence of the negligence, and that it ought to have been forseen in the light of attending circumstances." (*Winfree* v. *Jones,* 104 Va. 39, 51 S. E. 153, 1 L. R. A. (N. S.) 201.)

¶ 265. "A defendant in an action to recover damages for a personal injury cannot be held liable therefor unless his neglect of some duty he owed to the party injured was the proximate cause of the injury; and the requisites of proximate cause are, first, the doing or omitting to do an act which a person of ordinary prudence could foresee might naturally or probably produce the injury, and, second, that such act or omission did produce it." (*Virginia I. C. & C. Co.* v. *Kiser,* 105 Va. 695, 54 S. E. 892.)

¶ 266. "The requisites of proximate cause are the doing or omitting to do an act which a person of ordinary prudence could foresee might naturally or probably produce the injury, and the infliction of the injury by such act or omission." (*Wilson* v. *Railroad,* 108 Va. 822, 62 S. E. 972.)

¶ 267. "In order to warrant a finding that negligence or an act, not amounting to a wanton wrong, is the proximate cause of an injury, it must appear that the injury was the natural and probable consequence of the negligence or wrongful act, and that it ought to have been foreseen in the light

Sec. 48. *Virginia.*

of attending circumstances. If the wrong and resulting damages are not known by common experience to be naturally and usually in sequence, and the damage does not, according to the ordinary course of events, follow the wrong, then the wrong is not the proximate cause of the resulting damages."

"Whether or not a negligent act is the proximate cause of resulting damage is a matter of law for the court when the question is not involved in doubt, and there is no conflict in the evidence." (*Allison* v. *City* * * *, 112 Va. 243, 71 S. E. 525.)

CONTRIBUTORY NEGLIGENCE.

¶ 268. * * * "Plaintiff is not entitled to recover if his own want of care was either wholly or partially the efficient cause of the injury, or if the injury was due to the mutual and concurring negligence of the plaintiff and defendant. It is not necessary for the defendant to show that the plaintiff's negligence was the proximate cause of his injury. It is enough if the defendant shows that the plaintiff's act was a contributing or concurring negligent cause

of his injury." (*Clinch Coal Co.* v. *Osborne,* 114 Va. 13, 75 S. E. 750.)

¶ 269. "If, owing to a negligent failure properly to maintain gas mains, illuminating gas escapes into an abandoned sewer, and thence, through a private connecting pipe ,into a private building, killing the occupant, the negligence in permitting the gas to escape is the proximate cause of the death, unless there was some other supervening or responsible cause intervening between such negligence and the resulting death. To be a supervening cause * * * it must so entirely supersede the defendant's negligence that it alone, without the defendant's negligence contributing thereto in the slightest degree, produces the injury." (*City of Richmond* v. *Gay's Admr.,* 103 Va. 320, 49 S. E. 482.)

Other leading cases: *Standard Oil Co.* v. *Wakefield,* 102 Va. 824, 47 S. E. 830; *Fowlkes* v. *Railroad,* 96 Va. 742, 32 S. E. 464; *Lane Bros. Co.* v. *Barnard,* 111 Va. 680, 69 S. E. 969; *C. & O. R. Co.* v. *Wills,* 111 Va. 32, 68 S. E. 395; *So. R. Co.* v. *Bailey,* 110 Va. 833, 67 S. E. 365; *Jacoby*

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Co. v. *Williams,* 110 Va. 55, 65 S. E. 491; *B. of T. Co.* v. *Cralle,* 109 Va. 246, 63 S. E. 995, 132 Amer. State, 917; *C. & O. R. Co.* v. *Bell, Admr. of Paris,* 111 Va. 41, 68 S. E. 398, 27 L. R. A. (N. S.) 773.)

SECTION 49.

WASHINGTON.

¶ 270. "Where the immediate cause of death was pleurisy with effusion, following an accident, the proximate cause of the death was the cause that produced the pleurisy with effusion." (*Thompson* v. *Railroad,* 71 Wash. 436, 128 Pac. 1070.)

¶ 271. Negligence of defendant's foreman in dropping a brick, proximate cause of death of plaintiff's decedent. (*Koloff* v. *Railroad,* 71 Wash. 543, 129 Pac. 398.)

¶ 272. "Failure to look back after leaving the curb, even if contributory negligence, does not preclude a recovery where the defendant, driving an automobile, could have seen the plaintiff and avoided the accident if he had been running at a reasonable rate of speed or sounded a horn." (*Hillebrant* v. *Manz,* 71 Wash. 250, 128 Pac. 892.)

¶ 273. Building permit—owner of property—independent contractor—no staging over sidewalk as required by City ordinance one lawfully on sidewalk, injured by

Sec. 49. *Washington.*

falling brick—failure to construct staging proximate cause of injury. (*Frostman* v. *Stirratt, Etc.*, 65 Wash. 608, 118 Pac. 742.)

¶ **274.** Black damp in coal mine proximate cause of an injury from falling rock, where plaintiff's lights were put out by the black damp. (*Nalewaja* v. *N. I. Co.*, 63 Wash. 391, 115 Pac. 847.)

¶ **275.** "Contributory negligence by third person is not a defense to an action for negligently causing an injury to the plaintiff." (*Thoresen* v. *Lumber Co.*, 73 Wash. 99, 132 Pac. 860.)

¶ **276.** Accident on an elevator being operated by an inexperienced person—proximate cause negligence of the owner. (*Atkeson* v. *Jackson*, 72 Wash. 233, 130 Pac. 102.)

¶ **277.** Escaping electric current due to broken wire—negligence of company—proximate cause of injury. (*Metz* v. *Postal Tel. Co., Etc.*, 72 Wash. 188, 130 Pac. 343.)

¶ **278.** Starting of locomotive without warning, held to be the proximate cause of injury to employee of the company.

(*Alberg* v. *Campbell L. Co.,* 66 Wash. 84, 119 Pac. 6.)

¶ **279.** Damage by fire as result of carrying out an ordinance requiring building to be fumigated. Proximate cause held to be the ordinance and not the negligence of the officers. Assurance company not liable under its policy. (*Hocking* v. *Assurance Co.,* 62 Wash. 73, 113 Pac. 259, 36 L. R. A. (N. S.) 1155.)

¶ **280.** Where an extraordinary flood in a river is turned aside by a boom and by reason thereof washes away the opposite bank, the owner of the boom is liable. The same cannot be excused under the plea that such flood is an act of God. (*Kuhnis* v. *Lewis River B. & L. Co.,* 51 Wash. 196, 98 Pac. 655.)

Leading case: *Wodnick* v. *Luna Park,* 69 Wash. 638, 125 Pac. 941, 42 L. R. A. (N. S.) 638.)

SECTION 50.

WEST VIRGINIA.

¶ 281. "A violation of a statute inhibiting the employment of boys under fourteen years of age in coal mines constitutes actionable negligence whenever that violation is the natural and proximate cause of an injury." (*Norman* v. *V.-P. Coal Co.*, 68 W. Va. 405, 69 S. E. 857, 31 L. R. A. (N. S.) 504.)

¶ 282. "In an action for damages in such case the jury have a right to regard the intoxication of the husband as the proximate cause of his physical injury, and the injury to the wife's means of support as a natural sequence resulting from the unlawful sale of intoxicating liquor."

"The common law rule of proximate cause which obtains in other actions of tort does not apply to actions under section 26, chapter 32, Code 1906 * * *. (*Duckworth* v. *Stalnaker,* 68 W. Va. 197, 69 S. E. 850.)

Contributory Negligence.

¶ 283. "Negligence of a railroad company in failing to stop its train long enough

at a station to permit passengers to alight will not absolve a passenger from negligence in attempting to alight from the train after it has again been put in motion."

"One is not bound to assume the risk of a known danger because he is directed to do so by another; he must think and act for himself, and if he relies upon another's judgment and does an act, contrary to his own sense of prudence, he is negligent."

¶ 284. "In the present case the proximate cause of the injury was the alighting from the moving train, and not the failure to stop the train * * * at the station." (*Farley* v. *Railroad,* 67 W. Va. 350, 67 S. E. 1116; 27 L. R. A. (N. S.) 1111.)

¶ 285. * * * "Not only the incompetency of the mine boss must be proved, but such incompetency must be shown to be the proximate cause of the injury or to have directly contributed thereto." (*Fuller* v. *Margaret M. Co.,* 64 W. Va. 437, 63 S. E. 206.)

¶ 286. "Where in an action * * * for negligently allowing fire to escape from premises of the defendant, the defense is

Sec. 50. *West Virginia.*

that the loss was occasioned by a sudden shift of the wind, it must be shown * * * that the change of the wind was unusual and extraordinary, and such as in its nature not reasonable to be expected." (*Mahaffey* v. *Lumber Co.*, 61 W. Va. 571, 56 S. E. 893.)

Other leading cases: *Gerity's Admr.* v. *Haley*, 29 W. Va. 98, 11 S. E. 901); (*Butcher* v. *Railroad*, 37 W. Va. 180, 16 S. E. 457, 18 L. R. A. 519); *Washington* v. *Railroad*, 17 W. Va. 190; *Trustees B. I.* v. *Siers*, 68 W. Va. 125, 69 S. E. 468, 22 Ann. Cas. 920.

SECTION 51.

WISCONSIN.

¶ 287. "Where the master negligently retains in his employ an incompetent servant whose incompetency causes an injury, the master's negligence is, as a matter of law, the proximate cause of the injury." (*Serdan* v. *Falk Co.,* 153 Wis. 169, 140 N. W. 1035.)

¶ 288. "In a personal injury action the burden is upon the plaintiff to show to a reasonable certainly that defendant was negligent and that such negligence was the proximate cause of the injury."

It is not sufficient to show two or more possible causes, and from such evidence permit the jury to speculate as to which one caused the injury. (*Kasz* v. *Johnson Service Co.,* 151 Wis. 149, 138 N. W. 54.)

¶ 289. "If the fact of reasonable anticipation of injury, as an element of proximate cause, is established as a matter of law, error in submitting the question to the jury is harmless if the jury answer it correctly." (*Brossard* v. *Morgan Co.,* 150 Wis. 1, 136 N. W. 181.)

Sec. 51. *Wisconsin.*

INSTRUCTION.

¶ 290. "An instruction, in such case, that negligence is the proximate cause of an injury only when that injury is the natural and probable result of such negligence and when in the light of attending circumstances the injury ought to have been foreseen by a person of ordinary care and prudence, is approved." (*Lemke* v. *Milwaukee, Etc., Co.*, 149 Wis. 535, 136 N. W. 286.)

¶ 291. "To supply the element of reasonable anticipation essential to warrant a finding that a negligent act was the proximate cause of an injury, it is not necessary that an ordinarily prudent man ought reasonably to have anticipated the particular injury to the plaintiff or to any particular person, but it is sufficient that such a man ought reasonably to have anticipated that his conduct might probably cause some injury to another." (*Coel* v. *G. B. Trac. Co.*, 147 Wis. 229, 133 N. W. 23.)

¶ 292. Plaintiff's decedent was employed to operate edger saws. Johnson, an incompetent boy under sixteen years of age, was

employed to remove material from the saws. The local statute forbade the employment of minors under sixteen years old for such work. A board flew back over the saws and killed the edgerman. The jury, by special verdict, found Johnson incompetent, which incompetency was the proximate cause of the injury, and that defendant had knoweldge of that incompetency at the time of the injury. Plaintiff recovered.

The question not decided is this: Would the mere fact that Johnson was under sixteen, and his employment unlawful, entitle the plaintiff to recover, where the death was caused by negligence of the boy? (*O'Sullivan* v. *Lumber Co.,* 154 Wis. 467.)

Leading cases: *Eichman* v. *Buchheit,* 128 Wis. 385, 8 Ann. Cas. 435; *Feldschneider* v. *Railroad,* 122 Wis. 423, 99 N. W. 1034; *Deisenrieter* v. *K. M. M. Co.,* 97 Wis. 279, 72 N. W. 735; *Foster* v. *Malberg,* 119 Wis. 168, 137 N. W. 816, 41 L. R. A. (N. S.) 967.)

SECTION 52.

WYOMING.

¶ 293. Contributory negligence is an affirmative defense, and must be pleaded, but the defendant may take advantage of everything in the plaintiff's evidence which tends to defeat his right to recover.

"The question of negligence is a mixed one of law and fact, and where the facts are not disputed the question of submitting it to the jury is one of law to be determined by the court. In such case, if the evidence tends to prove negligence on part of defendant as the proximate cause of the injury, the question should be submitted to the jury, unless upon the whole evidence it is apparent that the act complained of was the result of the joint negligence of plaintiff and defendant, or that the injury and damage would not have occurred except for the negligence or want of reasonable care on the part of the plaintiff; this rule not applying where the injury is the result of a wanton or intentional act on the part of the defendant." (*Railroad* v. *Cook,* 18 Wyo. 43, 102 Pac. 657.)

SECTION 53.

ACT OF GOD.

¶ 294. This expression, "act of God," has long been used in law to describe causes or causations which are above and beyond human origin and control. For the same purpose the civil law employs the term "*vis major*," meaning, a greater force or power. Some such causes may be enumerated as follows: Rain, snow, hail, sleet, wind, lightning, earth-quakes, drouth, storms, tempests, perils of the sea, illness, death, floods, dangers of the rivers, natural light, darkness and fog, volcanic eruption, natural freezing and thawing, tides of the sea, and all such manifestations of nature, due entirely to natural causes, without human intervention to cause, and such as human skill and ability could not reasonably have foreseen and prevented. (*Story on Bailments,* Secs. 25, 211; *Gleason* v. *Va. M. R. Co.,* 140 U. S. 345; *Saunders* v. *Coleman,* 97 Va. 694, 34 S. E. 621, 47 L. R. A. 581.)

¶ 295. Where such demonstrations of nature occur to the injury of persons and

property entirely independent of human intervention as a cause, and such as human skill and ability could not reasonably have foreseen and prevented, it is in law an injury by the act of God, for which there is no redress.

¶ 296. Where the law imposes a duty and the party is disabled from performing it by act of God, without any default of his own, the law excuses him, but where one by his own contract creates a duty which he agrees to perform he will not, generally, be excused from making it good, notwithstanding any act of God. To this general rule exceptions have been made, in case of bail bonds, contracts for strictly personal services, marriage and the like, where death ends all. (Ante Sec. 51.)

¶ 297. Where the collision between two street cars, in which the injury occurred, was an accident due directly and exclusively to natural causes, without human intervention, which by no human foresight, pains or care reasonably to have been expected could have been prevented, the

Sec. 53. *Act of God.*

street car company was not liable. It was an act of God. (*Briggs* v. *Durham Trac. Co.*, 147 N. C. 389, 61 S. E. 373.)

SECTION 54.

ACT OF GOD AND HUMAN INTERVENTION.

¶ 298. It has been seen that when the injury is due entirely to natural causes, without human intervention, that is, when the proximate cause is the act of God, and is such as human skill and ability could not reasonably have foreseen and prevented, there can be no recovery; but combined with the act of God there may be the negligence of man, human intervention as an intervening efficient cause, accelerating the injury and consequent damages. One may so construct his lightning rods as to conduct the current into the house of his neighbor. He may construct a dam for the storage of water in such manner as to become liable for the injury done by its bursting under the pressure of an ordinary flood. Here would be two proximate causes of injury without either one of which the injury would not have occurred. Where man intervenes and uses an act of God to cause an injury, he is liable as though he had committed the injury with forces of his

own origin, and subject to his control. "No injury can be said to be the act of God which can, under any fair view, be attributed to the negligence of man." (*Ga. S. & F. Ry. v. Barfield,* 1 Ga. App. 203, 58 S. E. 236; *Chicago, R. I. & P. Ry.* v. *McKone,* Okla. Div. 2, 127 Pac. 488, 42 L. R. A. 709.)

¶ **299.** "A rainfall or cloudburst which has irregularly and infrequently occurred a number of times within the memory of man in a particular locality, and has caused heavy freshets in a particular stream, is a thing that may reasonably be expected to occur again, and is therefore not classed as '*vis major,*' or the act of God." Here the negligence of man became the proximate cause. A rainfall or cloudburst is indeed the act of God, but not in the sense of excusing the negligence of man which has intervened as an efficient proximate cause of the injury. (*Wilson* v. *Boise City,* 20 Idaho 133, 117 Pacif. 115, 36 L. R. A. 1158.)

SECTION 55.

INEVITABLE ACCIDENT.

¶ 300. There is much conflict among the authorities over the distinction between the terms "act of God" and "inevitable accident." Some hold them to be the same thing, while others say that every act of God (classed by the law as an accident) is an inevitable accident, but every inevitable accident is not an act of God. Damage by lightning is cited as an example of both, act of God and inevitable accident. A collision of vessels in the dark is cited as an example of inevitable accident, but not an act of God. (*The Mabey*, 14 Wall. 204, 20 Law. Ed. 881; *Fergusson* v. *Brent*, 12 Md. 9, 71 Amer. D. 582.)

¶ 301. There are many cases in which it is impossible to entirely eliminate man from those accidents which are said to be by act of God. "There is the intervention of man in a loss by tempest; for he chooses the route that brings the vessel where the tempest rages, he made the masts and sails, and sets the sails that break away in the

storm or drive the vessel under; he made the ship that is too weak or too small to live in such a tempest. It is by the intervention of man that vessels bound to and from England keep so far north as to fall in with icebergs, and sometimes be destroyed by them."

There are doubtless cases where at the particular time and under the particular circumstances the accident could not have been avoided. It was then inevitable, but the element of inevitability proceeded from the negligence of man at some previous time, and it is therefore not the act of God.

Where man can, by the use of ordinary skill and foresight, prevent the circumstances which will, if not prevented, result, in due course of time, in an inevitable accident, it is not the act of God.

¶ 302. "'Inevitable casualty' is a broader term than 'act of God.'" (*McKinley* v. *Jutte & Co.,* 230 Pa. St. 122, 79 Atl. 244, 22 Ann. Cas. 452; *Fergusson* v. *Brent,* 12 Md. 9, 71 Amer. D. 582.)

¶ 303. "Where a collision takes place between two vessels at sea, which is the result of inevitable accident, without the

negligence or fault of either party, each vessel must bear its own loss." (*Stainback* v. *Rae*, 14 Wall. 532, 14 Law Ed. 530.)

¶ 304. Chief Justice Fuller in delivering the opinion for the United States Supreme Court in *The Majestic* (166 U. S. 375, 41 Law Ed. 1039) quotes from *2 Kent's Com.*, page 597, "The Act of God means 'inevitable accident, without the intervention of man and public enemies'" * * *, and again, *3 Kent's Com.*, page 216, that "Perils of the sea denote natural accidents peculiar to that element, which do not happen by the intervention of man, nor are to be prevented by human prudence." The Chief Justice then adds: "The words 'perils of the sea' may, indeed, have grown to have a broader signification than 'the act of God.'"

¶ 305. Many courts hold that "Acts of God," "inevitable accidents," "perils of the sea," and "dangers of the river" are analogous terms, and import such excuses as will relieve a common carrier from liability for loss of goods received by him. That they will relieve him from liability where they are absolutely free from human

agency, and negliegnce of commission and omission, there can by no doubt, except in cases where he has obligated himself to deliver the goods notwithstanding these things.

¶ 306. A case of inevitable accident, *Kenova Trans. Co.* v. *Monongahela, Etc. Co.,* 56 W. Va. 70, 48 S. E. 844.

SECTION 56.

PURE ACCIDENT.

¶ 307. Pure accidents or simple accidents have not yet been eliminated from the facts of human experience. (*Conley* v. *Exp. Co.,* 87 Me. 352, 32 Atl. 965.)

¶ 308. "A pure accident, as recognized by law, is something that occurs after the exercise of the care required by law to prevent its occurrence." (*U. S.* v. *Boyd,* 45 Fed. 851.)

¶ 309. "In the discussion of questions of liability for negligence, the term 'pure accident' or 'simple accident' is uniformly employed in contradistinction to 'culpable negligence,' to indicate the absence of any legal liability. A 'purely accidental' occurrence may cause damage without legal fault on the part of any one." (*Fidel. & Cas. Co.* v. *Cutts,* 95 Me. 162, 49 Atl. 673.

¶ 310. If in doing a lawful act, using due care and all proper precautions neecssary to the exigency of the case, to avoid hurt to others, one accidentally does injury to

another, it is the result of pure accident, involuntary, unintentional, and for it no action lies. (*Brown* v. *Kendall*, 6 Cush. (Mass.) 292.)

¶ 311. "The definition of 'accident' generally assented to is an event happening without any human agency, or, if happening through human agency, an event which, under the circumstances, is unusual, and not expected, to the person to whom it happens." (*Carnes* v. *Iowa S. F. M. Assn.*, 106 Iowa 281, 68 Amer. State 306.)

¶ 312. In law a pure accident is something that occurs after the exercise of such care as the law requires under the circumstances. (*U. S.* v. *Boyd*, 45 Fed. 851.)

¶ 313. A pure accident is that which happens unexpectedly and without fault. (*Osborne* v. *Van Dyke*, 113 Iowa 557, 85 N. W. 784.)

SECTION 57.

NEGLIGENCE—PROXIMATE CAUSE.

¶ 314. "Negligence is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation, or doing what such a person under the existing circumstances would not have done."

The essence of the fault may lie in omission as well as in commission, and the duty is dictated and measured by the exigency of each particular case. Judgments which have to be formed in emergencies, and on the spot are not to be held to the same strict account as those which are formed after time for due deliberation. (*B. & P. Ry.* v. *Jones*, 95 U. S. 441, 24 Law Ed. 506; *Railroad Co.* v. *Brown*, 229 U. S. 317; *The Germanic*, 196 U. S. 589; *Mason* v. *Post*, 105 Va. 494, 54 S. E. 311.)

¶ 315. Negligence on the part of plaintiff and defendant is the same, but that of the former is called contributory negligence.

An act of negligence by commission or

omission is not necessarily actionable because it is negligent. To render it actionable it must be the proximate cause of an injury. Injury alone is not sufficient to support an action arising from the alleged negligence of defendant. There must be concurrence of wrong and injury. The relation of cause and effect must be established between the wrong and the injury, and that the proximate and not a remote cause. (*Lane Bros. Co.* v. *Barnard,* 111 Va. 680, 69 S. E. 969; *Cumb. Etc., R. Co.* v. *State,* 73 Md. 74.)

¶ **316.** Actionable negligence consists in a breach, or non-performance, of some duty which the party charged with the negligent act or omission owed to the one suffering loss or damage thereby. In the action of assumpsit employed to recover damages for breach of contract (not under seal at common law), the proximate cause of the damage is the breach of contract, and the recovery in damages is the amount due, with interest and costs. (*Roddy* v. *Railroad,* 104 Mo. 234, 15 S. W. 1112, 24 Amer. State 333, 12 L. R. A. 746.)

¶ 317. Plaintiffs purchased tickets entitling them to conveyance from W. to H. C. The train did not go to H. C., and plaintiffs were taken to E., several miles further from their destination than H. C., and increased their walking distance by two or three miles. Defendant thus committed a breach of contract in failing to carry plaintiffs to H. C. This breach of contract was the proximate cause of loss and of the inconvenience suffered by plaintiffs in being compelled to walk that additional distance on a dark wet night, and for this a recovery was given; but one plaintiff, the wife, it was alleged, took cold, from her exposure to the wet on that night, became ill in health, and incurred expense for medical attendance upon her, and for this recovery was refused as being too remote.

The Court then laid down the following rule: "To entitle a person to damages by reason of a breach of contract, the injury for which compensation is asked should be one that may be fairly taken to have been contemplated by the parties as the possible result of the breach of contract."

"To illustrate: Suppose that a passen-

ger is put out at a wrong station on a wet night and obliged to walk a considerable distance in the rain, catching a violent cold which ends in fever, and the passenger is laid up for a couple of months, and loses through his illness the offer of an employment which would have brought him a handsome salary." He may recover for the breach of contract, the inconvenience of the walk in the rain, or the expense of some other means of conveyance, all of which might reasonably be contemplated by the parties at the time of the breach, but the fever, and loss of proffered position are too remote. (*Hobbs* v. *London So. Ry.,* Law R. 10 Q. B. 111; *Murdock* v. *Railroad,* 133 Mass. 15.)

¶ 318. The rule is the same in contract and in tort, and the result must be the natural consequence of the act, and one which could have been foreseen in the light of attending circumstances, unless the act is one of wanton wrong. (*Ehrgott* v. *Mayor, Etc.,* 96 N. Y. 264; *Railroad* v. *Kellogg,* 94 U. S. 469.)

Doctrine Restated.

¶ 319. Excluding acts of wanton wrong, actionable negligence is compounded as follows:

1. A negligent act of commission or omission by the defendant.

2. Consequent resulting injury to plaintiff of which the negligent act was the proximate cause.

3. That the injury, or some injury, ought to reasonably have been foreseen in the light of attending circumstances.

To be excluded from the compound:

1. Contributory negligence amounting to a proximate cause.

2. Independent intervening efficient causes between the defendant's negligence and plaintiff's injury.

SECTION 58.

PROXIMATE CAUSE DEFINED AND ANALYZED.

Within the Law of Negligence.

¶ 320. The proximate cause of an injury is the efficient and dominant cause which acts directly to produce the effect, or sets in operation another cause, or other causes, not entirely independent of itself, which naturally and reasonably, in unbroken sequence, results in producing the effect as a consequence of the first or primary cause, without which it would not have occurred.

Actionable.

¶ 321. To be actionable, the proximate cause must have been such as a person of ordinary intelligence and prudence ought to have foreseen that it might naturally and probably produce an injurious effect on some person or thing, but not necessarily the one which it did produce.

Intervening Cause.

¶ 322. If, subsequent to the original proximate cause, a new efficient cause in-

tervene, to effect the injury, having its origin independent of the original cause, or, having its origin in the original cause, but which could not reasonably have been foreseen, by a person of ordinary intelligence and prudence, as a natural and probable result thereof, it supersedes the original cause, breaks the connection between the original cause and the effect, and becomes the proximate cause of the injury, rendering the original proximate cause remote.

Ordinary Intelligence.

¶ 323. It will be observed that, "Instead * * * of saying that the liability for negligence should be co-extensive with the judgment of each individual, which would be as variable as the length of the foot of each individual, we ought rather to adhere to the rule which requires in all cases a regard to caution such as a man of ordinary prudence would observe." (3 Bing. New Cases, 468.)

"Natural" and "Probable."

¶ 324. Effects which are only possible are not included among those that are

natural and probable. Effects which are only possible may never happen, but those which are natural or probable are those which do happen ,according to the nature of things, and with such frequency or regularity as to become a matter of definite inference, and in the light of surrounding circumstances ought to be foreseen by a person of ordinary intelligence and prudence as likely to follow his act as effect follows cause.

The natural consequence of an act is that which ordinarily follows it. A probable consequence is one that is more likely to follow its supposed cause than it is to fail to follow it.

Corollary.

¶ 325. Where one willfully injures another, the doctrine of contributory negligence does not apply, because the act is not negligent. Where one sees another who has negligently put himself in peril, and injures him, without the use of ordinary care to avert the injury, he is not only negligent, but his act is akin to willfulness and the same rule applies. The party who has the last clear chance to avoid an in-

jury and fails is not excused by the negligence of any one else. His negligence, and not that of the one first in fault, is the proximate cause of the injury.

Plaintiff who has received an injury occasioned by the negligence of defendant, but who could have avoided it by ordinary care on his part, cannot recover damages therefor, although the defendant ought to have discovered, but did not discover, his peril in time to have prevented the injury, where plaintiff's negligence continued up to the moment of the injury, and where the exercise of reasonable care before that time would have revealed his danger and enabled him to have escaped by his own effort. (*Dyerson* v. *Railroad*, 74 Kan. 528, 87 Pac. 680. Distinguished by *Himmelwright* v. *Baker*, 82 Kan. 569, 109 Pac. 178; *Cons. B. Co.* v. *Doyle*, 102 Va. 399, 403, 46 S. E. 390; *Richmond Tr. Co.* v. *Martin*, 102 Va. 209, 45 S. E. 886.)

¶ 326. Plaintiff's negligence, to be the proximate cause, must continue to the time of the injury, or to the point where afterward it is impossible by ordinary care to prevent it. It is defendant's duty, not-

withstanding plaintiff's negligence, to observe that degree of care required by the doctrine of last clear chance where he knew, or might have known by the exercise of ordinary care, the plaintiff's peril. (*Edge* v. *Railroad*, 153 N. C. 212, 69 S. E. 74.)

¶ **327.** The doctrine of last clear chance only applies when defendant's negligence is subsequent to plaintiff's, and it does not apply where their negligence is concurrent at the time of the injury. (*Green* v. *Railroad,* 143 Cal. 31, 76 Pacif. 719, 101 Amer. State 68.)

SECTION 59.

PROXIMATE CAUSE CHANGES.

¶ 328. The difficulty in applying the doctrine of proximate cause arises in part from the fact that the law of cause and effect must be established between the act complained of and the effect or injury sustained; and that an effect, as soon as produced, may itself become a cause producing another effect, and that effect in turn become the cause of another effect, thus forming a chain of links that were first effects, or results of causes, and then instantly became causes themselves by which the final effect or injury is consummated.

¶ 329. (a) Where a locomotive, coupled to a train of an hundred cars, more or less loosely coupled together, is gently started, the car couplings are tested one by one with a severe jerk until ninety-nine have been found sufficient to haul all behind them, but the one hundredth coupling breaks, leaving the car behind. The proximate cause of the break is not the car next in front of the break, but the starting of the locomo-

tive. That is the cause without which the coupling would not have broken. This coupling may have been defective, but for the force applied it would not have broken. Thus far no injury has been done, and no complaint made.

¶ 330. (b) The car, thus severed from the train, is a caboose, carrying the conductor. It runs back down the track, turns over, and injures him. The proximate cause of his injury is not the starting of the locomotive, but the breaking of the coupling.

¶ 331. (c) Where it appears that the caboose would have stopped on the track and no injury have come of it, but for the fact that a switch was open which turned the caboose upon a side track which it followed to the end and down an embankment, doing the injury. Here the proximate cause shifts to the open switch, the cause without which the injury would not have occurred.

¶ 332. (d) The caboose was well equipped with hand brakes with which the conductor could easily have stopped the car,

Sec. 59. *Proximate Cause Changes*

but he neglected to do so. His negligent omission becomes the proximate cause of his injury and he cannot therefore recover, though the railroad company may have been negligent in the use of an insufficient coupling, and in having an open switch.

Though defendant may have been negligent in the first instance, yet if plaintiff's negligence contributes proximately to his injury he cannot recover. (*The B. & P. Ry.* v. *Jones*, 95 U. S. 439, 24 Law Ed. 506; *Railroad* v. *Paris*, 111 Va. 41, 68 S. E. 398; 27 L. R. A. (N. S.) 773.)

SECTION 60.

"LAST CLEAR CHANCE."

¶ 333. In the beginning it was believed, and held by the courts, that where plaintiff and defendant were both guilty of negligence, resulting in injury to plaintiff, he could not recover. Human transactions, and the development of finer discrimination, and sense of justice evolved an exception to that rule. It would be difficult to trace this exception to its origin. It seems to have been clearly recognized as part of the common law of England by Lord Ellenborough in the case of *Butterfield* v. *Forrester,* 11 East 60, decided April 22, 1809, in which the Lord Chief Justice said: "A party is not to cast himself upon an obstruction which has been made by the fault of another, and avail himself of it, if he does not himself use common and ordinary caution to be in the right. * * * One person being in fault will not dispense with another's using ordinary care for himself."

¶ 334. In the case of *Bridge* v. *Railroad,* 3 Meeson & Welsby's Rep. 244, 247, A. D.

1837, the Court of Exchequer says: "The rule of law is laid down with perfect correctness in the case of *Butterfield* v. *Forrester.*"

¶ 335. Still later, in the year 1842, in the case of *Davies* v. *Mann,* 10 M. & W.'s Rep. 545, following the same rule, the trial court instructed the jury, "That though the act of the plaintiff, in leaving the donkey on the highway so fettered as to prevent his getting out of the way of carriages traveling along it, might be illegal, still, if the proximate cause of the injury was attributable to the want of proper conduct on the part of the driver of the wagon, the action was maintainable against the defendant; and his Lordship directed them, if they thought that the accident might have been avoided by the exercise of ordinary care on the part of the driver, to find for the plaintiff."

The jury so found for the plaintiff, and the finding was sustained.

¶ 336. This doctrine was now so well established that it came to be called and known as "*The rule in Davies* v. *Mann,*"

and it is still so called in late text books on the law of negligence. However, within the last three decades a new name—"*Last Clear Chance*"—for this doctrine has come into general use by the courts.

The rule presupposes negligence on the part of both plaintiff and defendant, the negligence of plaintiff, preceding that of defendant.

Discovered Peril.

¶ 337. Where the plaintiff has negligently imperiled his person or property to injury at the hands of the defendant, the rule is *in esse* as to him. If the injury come from defendant without negligence on his part, the rule does not apply; but if the defendant has discovered the peril, or had such opportunity as would have enabled a person of ordinary care and prudence to have discovered it, though not discovered by him, the rule is *in esse* as to him also. If, after the discovery, or such opportunity of discovery, of the peril by the defendant, it is possible by due care to avoid the injury he must do so, or be guilty of negligence, and liable for the injury, provided, however, that where the plaintiff's negli-

gence continues up to the moment of the injury, and where the exercise of reasonable care by him before that time would have revealed his danger to him, and enabled him to have avoided the injury by his own effort, the defendant will not be liable. See ante ¶ 325, and *Smith* v. *Railroad,* 58 Oregon 22, 113 Pacif. 41, 26 Ann. Cas. 434.

¶ 338. This principle is thoroughly well established in this country by many decisions of the Supreme Court of the United States, and by the courts of last resort in many, if not in all, of the states. The following instruction, approved by the United States Supreme Court, in *Inland and S. C. Co.* v. *Tolson,* 139 U. S. 551, 558, 35 Law Ed. 270, 272, is directly in point: * * * "Although the rule is that, even if the defendant be shown to have been guilty of negligence, the plaintiff cannot recover if he himself be shown to have been guilty of contributory negligence which may have had something to do in causing the accident, yet the contributory negligence on his part would not exonerate the defendant, and disentitle the plaintiff from recovering, if it be shown that the defendant might,

by the exercise of reasonable care and prudence, have avoided the consequence of the plaintiff's negligence."

¶ 339. Applying the law as laid down by the Virginia Court, in *Backus* v. *Norfolk & Atl. Ter. Co.,* 112 Va. 292, 71 S. E. 528, and *Roanoke Ry. Co.* v. *Carroll,* 112 Va. 598, 72 S. E. 125, the driver of an automobile, street car, locomotive, or the like, ordinarily rests under no obligation to stop his machine merely because he sees a person approaching the track in front, especially if that person be a footman, without anything apparent about him to admonish the driver that he is not able to protect himself. The driver may assume that such person will stop and wait for the machine to pass, and not attempt to cross so immediately in front of it as to come in contact with the machine. A pedestrian can stop instantly, but the momentum of such machine renders it less easy of control. See *Bassford, Admr.* v. *Railroad,* 70 W. Va. 280, 73 S. E. 926.

¶ 340. "The doctrine of the 'last clear chance' applies, notwithstanding the con-

tributory negligence of a plaintiff, where the defendant knows, or by the exercise of ordinary care ought to know, of plaintiff's danger, and it is obvious that he cannot extricate himself from it, and fails to do something which it has power to do to avoid the injury; or when the plaintiff is in some position of danger from a threatened contact with some agency under the control of the defendant, when the plaintiff cannot, and the defendant can, prevent the injury. The plaintiff must show that at some time, in view of the entire situation, including his own negligence, the defendant was thereafter culpably negligent and that such negligence was the latest in succession of causes. In such case the plaintiff's negligence is not the proximate cause of the injury. But this doctrine has no application to a case where both parties are equally guilty of an identical duty, the consequences of which continue on the part of both to the moment of the injury, and proximately contribute thereto." *So. Ry. Co.* v. *Bailey*, 110 Va. 833, 67 S. E. 365, approved in 112 Va. 604, 113 Va. 337, 74 S. E. 208.

¶ 341. "If plaintiff is guilty of negligence which might have produced his injury, but before the injury actually results the defendant is guilty of negligence which is the *immediate* cause of the injury, the negligence of defendant becomes, in law, the sole proximate cause of the injury, even though no injury could have resulted to plaintiff if he had not been originally negligent. The negligence of defendant supervening between the original negligence of plaintiff and the happening of the injury, destroys the legal force of plaintiff's negligence as a contributory cause to the injury." *Reidell* v. *Trac. Co.*, 69 W. Va. 18, 71 S. E. 174, approving 17 W. Va. 190.

¶ 342. "If the railroad company's employees knew of plaintiff's danger at a crossing in time to have avoided injuring him by exercising reasonable care, the company would be liable for their failure to do so, under the last chance doctrine, though plaintiff was negligent in putting himself in a dangerous position, and negligently remained there down to the time of the accident; it not being essential, as a rule, that plaintiff's negligence shall have

ceased before the accident, in order to recover under that doctrine. * * *

If both the plaintiff and defendant could have prevented the accident, but neglected to do so, their negligence was concurrent, and the last chance doctrine does not apply." *Bruggeman* v. *Railroad*, 147 Iowa 187, 123 N. W. 1007, 23 Ann. Cas. 876.

¶ **343.** "He who has the last clear chance to avert an injury, notwithstanding the previous negligence of the injured party, is solely responsible for such injury resulting from his failure to exercise ordinary care." *Pickett* v. *Railroad*, 117 N. C. 616, 23 S. E. 264, 30 L. R. A. 257, 53 Amer. State 611.

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